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

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

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

1. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Conclusions

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

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

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

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

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

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

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

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1. Introduction

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

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

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

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

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

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

– digitalisation of activities of the State Bureau of Investigations;

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

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

– improvement of law enforcement cooperation;

– expansion of international cooperation.

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

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

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

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

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

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

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

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

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

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

5. Law enforcement interaction and international cooperation

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

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

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

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

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

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

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

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

1. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Conclusion.

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

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

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

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

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

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

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

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

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

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

1. Introduction

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

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

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

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

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

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

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

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

3. Formulation of priority tasks in police activities

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

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

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

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

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

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

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

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

– Ensure control and access control at checkpoints;

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

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

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

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

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

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

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

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

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

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

4. Conclusions

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

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

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

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

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

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

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

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

1. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Conclusions

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

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

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

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

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

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

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

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

1. Introduction

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

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

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

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

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

2. Prevention and counteraction of discrimination

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

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

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

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

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

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

Other administrative legislative enactments include those that define

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

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

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

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

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

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

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

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

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

4. Conclusions

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

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

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

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

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

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

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

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

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

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

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

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

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

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FORMALIZATION OF CONTENT REQUIREMENTS FOR A NORMATIVE LEGAL ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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НОРМАТИВНЕ ЗАКРІПЛЕННЯ ЗМІСТОВИХ ВИМОГ ДО НОРМАТИВНО-ПРАВОВОГО АКТА

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

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

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

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

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

1. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

3. Competition of forgery in office with other related norms

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

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

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

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

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

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

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

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

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

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

5. Correlation of forgery in office with other criminal offenses

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

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

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

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

6. Correlation of forgery in office with certain administrative offenses

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

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

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

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

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

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

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

7. Conclusions

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

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ON THE CHARACTERISTICS OF THE FUNCTIONS OF STATE POLICY ON COMBATING DOMESTIC VIOLENCE

Abstract. ***Purpose.*** The purpose of this article is to identify and reveal the scope and content of the functions of state policy in combating domestic violence. ***Results.*** The activities of the state and its authorized public institutions are characterized by a targeted and systematic nature. Inconsistency and randomness in the process of performing public tasks carry risks of ineffective organization of social life and the failure of public authorities to achieve their institutional objectives. This aspect is ensured through a diverse range of categories, one of which is functions, reflecting the practical dimension of state activity (through its bodies and officials). Therefore, defining the functions of state policy on combating domestic violence is of both theoretical and practical importance. Based on an analysis of scholarly opinions, the article argues that the functions of state policy in this area represent practical directions of activity undertaken by state authorities aimed at ensuring and implementing public policy in the relevant field. It is substantiated that the most appropriate classification of such functions includes: social, law enforcement, educational, gender-related functions, as well as functions of analysis and forecasting. It is established that within the implementation of the social function, state policy in the researched area must encompass mechanisms for providing assistance to individuals affected by domestic violence. This includes organizing and implementing protection measures for victims, creating conditions for the restoration of their psychological and physical well-being, offering legal assistance, and providing consultations regarding interaction with authorized public bodies, among other services. ***Conclusions.*** The article concludes that the law enforcement function of state policy on combating domestic violence involves the prevention, suppression, and prophylaxis of violent acts, as well as the implementation of operations and measures aimed at holding perpetrators accountable under the law, proving their guilt, and applying legal sanctions. This direction of activity primarily falls under the competence of the state's law enforcement agencies, such as the National Police of Ukraine, as well as other authorized entities.

Keywords: policy, state policy, combating, function, domestic violence.

1. Introduction

The activities of the state and its authorized public institutions are characterized by a purposeful and systematic nature. Inconsistency and randomness in the execution of public tasks pose risks to the effective organization of social life and may prevent public authorities from achieving their institutional goals. This dimension is supported by a diverse array of categories, among which are functions that reflect the practical aspect of the state's activities (through its bodies and officials). Accordingly, identifying the functions of state policy in combating domestic violence is of not only theoretical but also significant practical importance.

The functions of the state in general, as well as the functions of state policy in various spheres of social life, have been the subject of numerous academic studies. In particular, this issue has been addressed in the works of scholars such as K.S. Bielskyi, A.B. Vengerov, A.I. Denysov, I.M. Dronin, M.I. Koziubra, S.O. Komarov, S.I. Melnyk, L.A. Morozova, O.M. Muzychuk, Yu.A. Tykhomyrov, and many others. Nevertheless, despite the considerable body of theoretical work, the study of the functions of state policy on combating domestic violence remains underdeveloped in the academic literature.

Therefore, the purpose of this article is to define the range and reveal the content of the functions of state policy aimed at combating domestic violence.

2. Foundations for Defining the Functions of State Policy in the Sphere of Economic Security

Beginning this scholarly inquiry, it should be noted that the word *function* originates

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from the Latin *functio*, meaning "performance" or "execution." In its etymological sense, the term may refer to: (a) a duty, scope of activity, purpose, or role; (b) a dependent variable, i.e., a quantity that changes as another quantity changes; (c) a specific activity of an organism or its constituent organs; (d) the significance of any form or its role in a specific system, determined by its interrelation with other forms (Oliinyk, Husariev, Sliusarenko, 2001).

The concept of functions has found wide application in theoretical and legal studies focused on state policy. For example, H.Y. Puzanova defines the functions of state policy in the area of foreign investment as components of managerial activity that are characterized by a certain degree of autonomy, uniformity, complexity, and stability in the state's authoritative and organizational influence during the implementation of foreign investment policy. These functions aim to ensure the rights and legitimate interests of foreign investors in the course of their investment activities within the territory of Ukraine. These functions are specific in terms of their subject matter, content, and means of exerting the state's regulatory influence on foreign investors. They are closely connected to the state's social functions and reflect the methods through which these are carried out. Functions illustrate how, by what means, and through which interactions with society the state exercises its powers (Puzanova, 2013).

D.O. Koshykov proposes viewing the functions of state policy in the area of economic security, first, as general directions of state activity aimed at creating a stable system of economic security, which includes a normative legal framework, a list of authorized bodies responsible for implementing regulatory provisions, and a system of defined principles, forms, and methods of policy implementation. Second, he views them as distinct groups of homogeneous actions performed by public administration entities, which aim to organize, develop, and protect socio-economic relations, ensure the realization of citizens' socio-economic rights and freedoms, and create conditions for further development and growth of the national economy (Koshykov, 2020).

3. Formation of the Functions of State Policy in the Sphere of Economic Security

In light of the above, the functions of state policy to combat domestic violence are practical directions of activity undertaken by public authorities, aimed at ensuring and implementing state policy in the relevant domain. The following functions should reasonably be included in this category:

– **Social Function.** The primary focus of the state and the central object of its activity is the individual and society at large. According to Article 3 of the Constitution of Ukraine, the human being, his or her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine. Human rights and freedoms and their guarantees determine the content and orientation of the state's activity. The state is accountable to the individual for its actions. The affirmation and protection of human rights and freedoms are the primary duties of the state (Constitution of Ukraine, 1996). Therefore, the social function is the foremost and dominant function of state policy aimed at countering domestic violence. Scholars argue that the social function smooths out contradictions within society and affects the interests of every individual. Its scope includes creating conditions for a dignified life and the development of citizens, as well as providing assistance to socially vulnerable groups. The tasks solved through the social function differ fundamentally from those addressed by other functions. It possesses a distinct implementation mechanism and tools. Elements of the state's social function mechanism include social legislation, financing of social obligations, and the activities of state authorities and various social institutions. In fulfilling this function, special instruments are employed, such as the allocation and payment of various types of social assistance, provision of medications, and implementation of rehabilitation programs (Dmytryk, Iliushyn, 2020). Hence, as part of implementing the social function, state policy in the field under study must include mechanisms for providing support to victims of domestic violence. This entails organizing and delivering protection for affected individuals, creating conditions for the restoration of their psychological and physical well-being, providing legal assistance, and offering consultation on interactions with authorized state bodies, among other forms of support.

– **Law Enforcement Function.** This function complements the social one and is primarily focused on the phenomenon of domestic violence and those who perpetrate it. As V.V. Kryzhna writes, the law enforcement function of the state lies in ensuring the protection of the constitutional order, citizens' rights and freedoms, legality and law and order, the environment, and all social relations regulated by law. It has always been inherent to the state and remains one of its leading activities. It is through this function that the existence and well-being of society and the individual within it are maintained (Kryzhna, 2019). Y.I. Horinetskyi offers the following definition: the law enforcement function of the modern state is an independent and priority direc-

tion of state policy, implemented through legal means to achieve such social outcomes as the protection of law in general, the foundations of the constitutional order, and particularly the rights, freedoms, and legitimate interests of individuals and citizens, as well as other protected interests. It also serves as a legal form for achieving other goals of society and the state (Horinetskyi, 2005). I.V. Sazhnev supports this view, defining the law enforcement function as a direction of the state's activity that expresses its essence at the current historical stage and is aimed at addressing the fundamental tasks of protecting the constitutional order, citizens' rights and freedoms, legality, and the rule of law across all legally regulated social relations. It is carried out through specific forms and special methods (Sazhnev, 2000). D.S. Tykhonova emphasizes that the law enforcement function is linked to the organization and execution of law enforcement activities, which she interprets both narrowly and broadly. "In the narrow sense, law enforcement activity refers to the actions of specially authorized bodies (both public and private) aimed at protecting citizens' rights and freedoms, public order, and ensuring legality, performed in accordance with legal procedures and within the scope of their authority. In the broad sense, it encompasses the activities of all public bodies and non-governmental organizations in ensuring compliance with citizens' rights and freedoms, their realization, and the maintenance of legality and public order," she explains (Tykhonova, 2022). Thus, the law enforcement function of state policy in combating domestic violence involves preventing, halting, and addressing acts of violence, as well as implementing operations and actions aimed at bringing perpetrators to legal accountability, proving their guilt, and applying appropriate legal sanctions. This function is primarily executed by law enforcement bodies, such as the National Police of Ukraine, and other authorized entities.

– **Educational Function.** Generally, education involves the formation of a holistic personality that possesses a set of specific cultural norms, customs, and traditions, and is capable of fully assimilating cultural values. The environment of the educational process encompasses all aspects of public life, while the tools of education include all forms of human activity, situational interactions, interpersonal communication, internal cognitive processes, and external stimuli (Beschastnyi, 2010). In accordance with its internal content, the educational function of state policy on combating domestic violence is aimed at forming a correct public understanding and awareness of the illegality and harmfulness of this negative phenomenon. This direction involves broad explanatory efforts, including informing the population about domestic violence and the procedures for countering it through mass media, organizing lectures, seminars, and round tables in educational institutions, schools, and universities, operating hotlines and websites where individuals can obtain all necessary information, and similar measures.

– **Gender Function.** Closely related to the educational function, the gender function focuses specifically on overcoming existing gender stereotypes that, in many respects, contribute to the emergence of domestic violence. The notion of women's weakness and the dominance of a man's will in the family lays the foundation for such forms of discrimination. Consequently, the gender function involves the development of mechanisms to ensure equality between women and men in all spheres of public life, the fostering of societal intolerance toward discrimination, as well as the creation of social support institutions for women and the protection of their rights, particularly against the negative impact of abusers.

– **Analytical and Forecasting Function.** In a general sense, analysis involves the examination and identification of certain cause-and-effect relationships, the determination of forms and methods for influencing these relationships and interactions with the aim of enhancing the efficiency of a particular entity's functioning and its further development. Forecasting, in turn, consists of activities aimed at predicting its future condition, possible trajectories of development, and potential transformations. In the sphere of public administration, forecasting facilitates the most optimal selection of forms and methods for achieving projected outcomes, identifying internal and external threats for the purpose of taking appropriate responsive measures, and anticipating the consequences of managerial decisions (Buhaichuk, 2018). As a comprehensive function of state policy to combat domestic violence, analysis and forecasting involve working with the information field and data concerning the current state of domestic violence prevalence, the effectiveness of countermeasures, the performance of authorized bodies in this field, and the determination—based on the gathered data—of prospects for improving mechanisms of state regulation and intervention.

4. Conclusions

Thus, in our view, the outlined list reflects the key functions of state policy in combating domestic violence. The conceptual framework presented in this article is, without doubt, subject to critical reflection. Nevertheless, it underscores a vital point: domestic violence cannot

be addressed as an isolated or "ordinary" legal offense. This phenomenon requires a comprehensive and multifaceted policy approach, with coordinated efforts across various directions and sectors. Only such an integrated strategy can ensure the eradication of this deeply rooted social issue as a whole, rather than merely suppressing its individual manifestations.

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ДО ХАРАКТЕРИСТИКИ ФУНКЦІЙ ДЕРЖАВНОЇ ПОЛІТИКИ ПРОТИДІЇ ДОМАШНЬОМУ НАСИЛЬСТВУ

Анотація. ***Мета*** статті полягає у встановленні кола та розкритті змісту функцій державної політики протидії домашньому насильству. ***Результати.*** Діяльність держави, а також уповноважених владних інституцій, має цілеспрямований і системний характер. Адже непослідовність та хаотичність в процесі виконання публічних завдань несе ризики неефективного упорядкування суспільного життя та недосягнення владними відомствами цілей свого існування. Забезпечується цей аспект за допомогою різноманітного спектру категорій, одними з яких є функції, які відображають практичний бік діяльності країни (в особі її органів та їх посадових осіб). А відтак, визначення функцій державної політики протидії домашньому насильству має важливе не лише теоретичне, а я практичне значення. У статті, на основі аналізу наукових поглядів вчених, аргументовано, що функції державної політики протидії домашньому насильству - це практичні напрями діяльності органів державної влади, що спрямовані на забезпечення та реалізацію державної політики у відповідній сфері. Обґрунтовано, що до переліку функцій державної політики протидії домашньому насильству найбільш доцільно віднести: соціальну, правоохоронну, виховну, гендерну функцію, а також функції аналізу та прогнозування. Визначено, що в рамках реалізації соціальної функції, державна політика в досліджуваній сфері має включати в себе механізми надання допомоги постраждалим від домашнього насильства особам. Це передбачає організацію та реалізацію захисту потерпілих

фізичних осіб, створення умов для відновлення їх психологічного та фізичного здоров'я, надання юридичної допомоги та консультування з питань взаємодії із уповноваженими органами влади і таке інше. ***Висновки.*** Зроблено висновок, що правоохоронна функція державної політики протидії домашньому насильству передбачає запобігання, припинення та профілактику насильницьких дій, а також проведення операцій та заходів, спрямованих на притягнення винних у вчиненні останніх осіб до відповідного виду юридичної відповідальності, доказу їх провини та застосування негативних юридичних санкцій. Це напрям діяльності, у першу чергу, правоохоронних органів держави, наприклад, Національної поліції України, а також інших уповноважених суб'єктів.

Ключові слова: політика, державна політика, протидія, функція, домашнє насильство.

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THE CONCEPT AND FEATURES OF FORMING STATE POLICY IN THE FIELD OF CIVILIAN FIREARMS CIRCULATION

Abstract. ***Purpose.*** The purpose of this article is to reveal the concept and specific features of forming state policy in the field of civilian firearms circulation. ***Results.*** The article defines the permissive model of civilian firearms circulation functioning in Ukraine, which constitutes an administrative and legal mechanism of a preventive nature, aimed at ensuring public safety and law and order through clear administrative and legal regulation of citizens' access to firearms. It is demonstrated that the essence of the permissive model lies in the establishment of a system of special permits, which serve as a mandatory condition for acquiring, storing, carrying, and using certain categories of firearms. This creates a narrow scope of legitimate actions for the subjects of legal relations in this area, while simultaneously providing for legal consequences in the event of deviation from the established procedure. The article defines that state policy in the field of civilian firearms circulation in Ukraine is a systematic, authoritative activity regulated by current legislation, implemented by state authorities in cooperation with civil society institutions. This activity involves the formulation, implementation, and control of strategic, administrative, and organizational-tactical decisions aimed at regulating, organizing, and ensuring the safe functioning of social relations related to the lawful acquisition, storage, use, and circulation of civilian firearms. It is further revealed that the state policy in this sphere aims to ensure public safety, strengthen national security, prevent illegal firearms circulation, protect the constitutional order and human rights by implementing an effective administrative and legal mechanism, creating transparent procedures, carrying out preventive control and relevant oversight, and forming a favorable legal environment for realizing the balanced interests of the state, society, and individuals under conditions of dynamic socio-political transformation. ***Conclusions.*** The article notes that the state policy in the field of firearms circulation in Ukraine has the following characteristics: – legal certainty and regulatory framework; – integration of the interests of the state, society, and individuals; – interagency nature; – preventive and security-oriented focus; – adaptability to transformational processes (including the conditions of full-scale invasion); – orientation toward digitalization (aspiration to implement electronic registries, automated firearms accounting systems, simplified electronic procedures for accessing public information and control measures); – increased level of oversight; – development of a legal culture of firearms ownership and use as a separate direction; – institutionalization of public control, expert examination, and civic participation; – a specific legal regime of responsibility; – international coordination in combating illegal circulation.

Key words: administrative regulation, administrative legal relations, administrative procedures, administrative and legal mechanism, state policy, expert examination, firearms, control, legal system, subjects.

1. Introduction

Following the full-scale invasion of Ukraine by the Russian Federation, the issue under consideration has gained heightened relevance due to several determinants. Firstly, new methods and channels for acquiring weapons have emerged, along with a significant increase in the quantity of firearms present within Ukraine. Secondly, the threat to personal security has intensified, the mechanisms of civil protection have expanded, and a negative socio-psychological climate has formed – a combination that, in the presence of weapons, may pose a threat to the life and safety of citizens. Thirdly, there has been a growing demand for personal protection, which may be satisfied through the unlawful acquisition of weapons. Therefore, it is essential to address the issue of regulating arms circula-

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tion, establishing mechanisms for the lawful use of firearms under current conditions, and ensuring their removal or disposal once the need for their use no longer exists, or in cases where possession was unlawful or violated legislative norms (Shyts, 2023).

The administrative and legal aspects of state policy regarding arms circulation in Ukraine have been comprehensively studied by scholars such as V. Vasyliev, S. Didenko, O. Drozd, K. Kastornov, M. Komissarov, M. Kulyk, V. Litoshko, V. Makarchuk, V. Otsel, I. Pokhylenko, R. Serbyn, O. Fomenko, T. Shumeiko, among others.

Nevertheless, arms circulation in Ukraine remains insufficiently regulated, particularly by norms of administrative law. Accordingly, scholarly inquiry into this area is both timely and of significant relevance.

The aim of this article is to examine the concept and specific features of the formation of state policy in the sphere of civilian firearms circulation.

2. Specific Features of Arms Circulation Regulation

The circulation of firearms owned by private individuals is strictly regulated by legislation in the majority of countries and is subject to various restrictions. Depending on the degree of regulatory stringency, scholars generally distinguish among three main models of civilian firearms circulation: the liberal, the liberal-permissive (hybrid), and the permissive model (Kurinnyi, 2021).

Ukraine applies the permissive model. From a legal standpoint, the permissive system of arms circulation constitutes a specialized administrative law institution, established by administrative legal norms. It defines a narrowed legal "corridor" for rights holders regarding the issuance of permits for the acquisition, possession, carrying, and transportation of certain categories of firearms. It also governs the planning, construction, establishment, and operation of facilities where weapons are stored or used. Moreover, it sets out a clear (permissive) list of possible and necessary actions for legal subjects operating in this sphere; any deviation from these procedures constitutes an administrative offense and entails liability for the persons at fault (Didenko, 2016).

At the same time, the regulation of arms circulation directly affects the legal regime governing the use of firearms among the general population and specific social groups. It influences the legality of weapons circulation and the state's capacity to combat illegal arms trafficking and armed violence. Currently, no universal approach exists among countries regarding arms regulation. Consequently, the scope of permitted firearm ownership, carrying, and use by civilians varies significantly – from mandatory possession or use (as in Norway and Switzerland), to complete prohibition (Luxembourg, Malaysia), or substantial restriction (Vatican City, Ireland, etc.). Some jurisdictions impose temporary bans on carrying firearms (Colombia, the Dominican Republic), restrict carrying in specific territories (Afghanistan, Yemen), or promote voluntary surrender of weapons (Argentina, the United Kingdom, Thailand) (Nersesian, 2023).

Thus, the permissive model of civilian firearms circulation functioning in Ukraine represents an administrative and legal preventive mechanism aimed at ensuring public safety and legal order through clearly defined administrative regulations governing citizens' access to firearms. Its essence lies in the establishment of a system of special permits, which are mandatory prerequisites for acquiring, possessing, carrying, and using certain categories of firearms. This creates a narrow framework of legitimate actions for legal subjects in this domain, while simultaneously establishing legal consequences for deviation from the prescribed procedures. Under the permissive model, the state exercises its supervisory function by determining clear legal boundaries, procedures, and criteria for firearm ownership. This, in turn, enables effective monitoring of the legality of arms circulation, prevention of abuse, and combatting of firearms-related crime. Although this regulatory regime significantly restricts the opportunity to use weapons, it is oriented toward securing collective safety and maintaining legal order.

Further, it is necessary to define the concept of *state policy*. It is well known that the term "policy" originates from the ancient Greek word *polis* (city-state), as well as *politike* (the art of governance) and *politicas* (a statesman), and refers to activities related to the leadership and administration of society based on public authority. Hence, policy influences not only society as a whole but also specific social groups that fall within the scope of its governing functions. Accordingly, policy is capable of ensuring the realization of public, personal, and group interests, as well as regulating interpersonal relations in order to preserve societal cohesion.

A key form of policy is state policy (that of the government, the president, the parliament, and various ministries), which undergoes transformations in response to changes in its political and functional dimensions and has therefore become a subject of theoretical and methodological (often contested) academic inquiry. A policy is considered *state* not only because it influences society, but because

its initial stage of formulation begins within governmental or other public institutions.

The use of various inadequately and ambiguously translated foreign-language terms by scholars has led to confusion in interpreting definitions of "policy" (*policy* vs. *politics*), "state policy" (*public policy* vs. *state policy*), and "state policy research" (*public policy study* vs. *state policy study*). A deeper analysis of state policy (its formulation, adjustment, implementation, and evaluation) heavily depends on a clear and constructive interpretation of conceptual terminology (Lavruk, 2018).

Traditionally, policy is also defined as the art of governing the state. It reflects the interests of social groups, classes, and nationalities and is always conditioned by the economic state of society. According to the authors of the *Political Science Encyclopedic Dictionary*, policy is "the organizational, regulatory, and supervisory sphere of society, within which social activity is carried out, aimed primarily at the attainment, maintenance, and exercise of power by individuals and social groups in order to satisfy their demands and needs" (Shemshuchenko, Babkin, 1997; Andriiash, 2013).

State policy is an essential component of societal functioning. It has numerous dimensions and characteristics and forms a corresponding system and mechanisms of socially oriented public governance, since it aims at improving citizens' quality of life and ensuring social stability (Andriiash, 2013). State policy should be comprehensive in its functional orientation toward resolving interrelated political and socio-economic problems. It must respond in a timely manner to transformational changes taking place in the state and society, and it must always be effective (with optimal distribution of governmental authority, structured quality of public administration decisions, and well-defined goals and measures), result-oriented, and socially acceptable (Lavruk, 2018).

T. Shumeiko defines state policy in the sphere of arms circulation in Ukraine as a targeted, organized, and relatively stable form of public administration activity (including both action and inaction) by public authorities (as well as activities of civil society actors) aimed at regulating, developing, and resolving issues related to the proper course of social relations and processes in the area of arms circulation. This is achieved through the implementation of an administrative and legal mechanism for forming and conducting this policy (Shumeiko, 2022).

In terms of its form, the essence of state policy in this field is manifested in the decisions (actions or inaction) of competent state bodies made in accordance with the requirements of Part 2 of Article 19 of the Constitution of Ukraine (including actions of civil society actors). In terms of substance, it is revealed through its conceptual foundation (the current doctrine of administrative law) and the ideological principles of state policy (Shumeiko, 2022).

In our view, state policy in the field of civilian firearms circulation in Ukraine is a system-based and authority-driven activity, regulated by current legislation and implemented by state authorities in cooperation with civil society institutions. It involves the formulation, implementation, and oversight of strategic, administrative, and organizational-tactical decisions aimed at legally regulating, organizing, and ensuring the safe operation of social relations concerning the lawful acquisition, possession, use, and circulation of civilian firearms.

3. State Policy in the Sphere of Civilian Firearms

Among the objectives of state policy in the field of arms circulation control, V. Vasylevych identifies the following: 1) establishing state control over arms circulation; 2) promoting compliance with legislation governing arms circulation; 3) implementing preventive measures to prevent firearms from entering the illegal market; 4) setting rules for the circulation of legally manufactured firearms; 5) identifying firearms found in illegal circulation; 6) eliminating firearms in illegal circulation; 7) establishing legal liability and holding accountable those responsible for violations of the law and involvement in illegal firearms circulation; 8) developing international cooperation in the field of arms control (Vasylevych, 2023).

Important elements of state policy in the field of illicit firearms trafficking include: the establishment of criminal liability for the illegal manufacture and circulation of firearms, their parts and components, and ammunition; falsification, or unlawful destruction, removal, or alteration of firearm markings; firearm marking to ensure effective tracking and identification; systematic record-keeping of information regarding firearms and international operations involving firearms, their parts and components, and ammunition for tracing purposes; legal provisions for the confiscation of illegally manufactured or traded firearms, their parts and components, and ammunition, followed ideally by their destruction; licensing of all international transactions involving firearms and mandatory marking of all imported firearms (Vasylevych, 2023).

In our view, state policy in the field of civilian firearms circulation in Ukraine aims to ensure public safety, strengthen national security, prevent the illegal circulation of weapons, protect the constitutional order and human

rights. This is achieved through the implementation of an effective administrative and legal mechanism, the establishment of transparent procedures, the exercise of preventive control and appropriate oversight, as well as the creation of a favorable legal environment for realizing the balanced interests of the state, society, and the individual in the context of dynamic transformations of the socio-political landscape.

What are the key traits or characteristics of state policy in the field of civilian firearms circulation in Ukraine? According to T. Shumeiko, the main features of state policy in the sphere of arms circulation in Ukraine are as follows:

1. Purpose – aimed at creating the most favorable conditions in the state for the development of relations and processes in the relevant field, which: a) expand legal opportunities for: – the state in protecting its sovereignty, constitutional order, rule of law, society, citizens, and their property; – citizens in defending their lives and health, including through the use of firearms, and in conducting economic activities related to firearms circulation; b) define the characteristics of lawful behavior in the sphere of arms circulation while preventing illegal arms trafficking and other security risks;

2. Special tasks – organizing and regulating relationships and processes in the arms circulation sphere; consistently removing the sector from the shadow economy; ensuring the highest possible level of citizen and national security through proper functioning of arms circulation mechanisms; developing, approving, and implementing national strategies and targeted programs in the field; exercising oversight and supervision over relationships and processes related to arms circulation, as well as over the formation and implementation of this type of state policy in general;

3. Functions – derived from the fundamental functions of the state and those of the subjects responsible for forming and/or implementing the relevant policy;

4. Specific domain of application – the arms circulation sector;

5. Subjects involved in policy formation and implementation – including the legislative, executive, and judicial branches of government, as well as civil society actors;

6. Specific normative foundation – distinct legal basis underpinning this type of policy;

7. Implementation within specific directions – such as defining the legal regime of firearms ownership; restricting the rights and freedoms of individuals and legal entities regarding firearms circulation; parliamentary and public oversight of the policy's implementation;

8. Existence of an administrative-legal mechanism for the formation and implementation of state policy in the field of arms circulation (Shumeiko, 2022).

In our view, state policy in the field of arms circulation in Ukraine is characterized by the following features: –legal clarity and regulatory certainty; integration of the interests of the state, society, and the individual; interagency coordination; –preventive and security-oriented focus; –adaptability to transformational processes, particularly in the context of full-scale military invasion; –digitalization-oriented approach (striving to implement electronic registries, automated firearms tracking systems, simplified electronic access to public information and control procedures); –enhanced level of oversight; –formation of legal culture of firearm ownership and use as a separate focus area; –institutionalization of public control, expert evaluation, and participation; –special legal liability regime; international coordination in combating illicit firearms trafficking

4. Conclusions

Overall, the formation of state policy in the field of civilian firearms circulation in Ukraine is a complex and dynamic process that emerges at the intersection of the state's security, legal, and socio-cultural priorities. State policy serves both as a tool for regulating legal relations related to the production, acquisition, storage, use, and disposal of firearms, and as a mechanism for ensuring national, public, and personal security under conditions of security challenges (particularly in the context of full-scale invasion). The substantive content of this policy involves regulating arms circulation, fostering a legal culture of firearm ownership, establishing a system of preventive control and accountability, and ensuring effective governmental and public management of processes related to both legal and illegal arms circulation.

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ПОНЯТТЯ ТА ОСОБЛИВОСТІ ФОРМУВАННЯ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОБІГУ ЦИВІЛЬНОЇ ВОГНЕПАЛЬНОЇ ЗБРОЇ

Анотація. ***Мета*** статті полягає у тому, щоб розкрити поняття та особливості формування державної політики у сфері обігу цивільної вогнепальної зброї. ***Результати.*** У статті визначено дозвільну модель обігу цивільної зброї, що функціонує в Україні, та є адміністративно-правовим механізмом превентивного характеру, спрямованим на забезпечення публічної безпеки та правопорядку шляхом чіткого адміністративно-правового регламентування доступу громадян до зброї. Розкрито, що сутність дозвільної моделі полягає у встановленні системи спеціальних дозволів, які є обов'язковою умовою для набуття, зберігання, носіння та використання певних категорій зброї, що створює вузьке коло легітимних дій для суб'єктів правовідносин у цій сфері, водночас передбачаючи правові наслідки за відхилення від встановленого порядку. Визначено, що державна політика у сфері обігу цивільної вогнепальної зброї в Україні – це системно-владна та регламентована чинним законодавством діяльність органів державної влади у взаємодії з інститутами громадянського суспільства, що полягає у формуванні, реалізації та контролі стратегічних, адміністративних та організаційно-тактичних рішень, спрямованих на нормативне врегулювання, впорядкування та безпечне функціонування суспільних відносин, пов'язаних з правомірним набуттям, зберіганням, використанням та обігом цивільної вогнепальної зброї. Розкрито, що державна політика у сфері обігу цивільної вогнепальної зброї в Україні має на меті забезпечення публічної безпеки, зміцнення національної безпеки, запобігання незаконному обігу зброї, захист конституційного ладу та прав людини, шляхом упровадження ефективного адміністративно-правового механізму, створення прозорих процедур, здійснення превентивного контролю та відповідного нагляду, а також формування сприятливого правового середовища для реалізації збалансованих інтересів держави, суспільства й особи в умовах динамічних трансформацій суспільно-політичного простору. ***Висновки.*** Зазначено, що державна політика у сфері обігу зброї в Україні має наступні особливості: – правова визначеність та нормативна регламентованість; – інтеграція інтересів держави, суспільства та громадянина; – міжвідомчий характер; – превентивно-безпекова спрямованість; – адаптивність до трансформаційних процесів (зокрема, до умов повномасштабного вторгнення); – орієнтація на цифровізацію (прагнення до впровадження електронних реєстрів, автоматизованих систем обліку зброї, спрощених електронних процедур доступу до публічної інформації та контрольних заходів); – підвищений рівень контролю; – окремим напрямком є формування правової культури володіння та користування зброєю; – інституціоналізація громадського контролю, експертизи та участі; – особливий юридичний режим відповідальності; – міжнародна координація у сфері протидії нелегальному обігу.

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

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THE CONCEPT OF FOOD SECURITY AND THE CHALLENGES OF ITS ENSURING IN MODERN CONDITIONS

Abstract. ***Purpose.*** The aim of this article is to formulate the author's definition of the concept of food security and to identify the key challenges to its provision under current conditions. ***Results.*** Based on an analysis of scientific perspectives, the article proposes an original definition of food security. It outlines the key dimensions of food security and emphasizes that the war in Ukraine has a negative impact not only on the country's food security and agricultural sector, but also on the entire European region. This leads to rising inflation rates and, consequently, increases in the prices of goods and services. The significance of food security lies in its influence on public health, economic stability, and national security as a whole. Furthermore, it is argued that ensuring food security contributes to reducing hunger and poverty, while simultaneously promoting sustainable agricultural practices, efficient food distribution systems, and resilient supply chains of various food products. The article asserts that food security cannot be effectively ensured without active governmental support and international cooperation. Under conditions of global climate change, economic challenges, and political instability, food security becomes a crucial factor for national development and the preservation of social, economic, and political stability. ***Conclusions.*** Thus, the absence of food security affects billions of people around the world, depriving them of their fundamental right to access nutritious food and, in some cases, leading to devastating consequences for individuals and society. The war in Ukraine adversely affects food security and the functioning of agriculture not only domestically but across Europe, resulting in inflationary pressures and increased costs of goods and services. These factors pose short- and medium-term challenges. However, promising efforts are being undertaken by individuals, organizations, and governments to address food insecurity. Therefore, the importance of collective international action in overcoming this crisis cannot be overstated.

Key words: security, food security, agricultural production, agriculture.

1. Introduction

Ensuring food security in Ukraine is one of the most critical aspects of national security, as it determines the state's ability to provide its population with sufficient quantities of food of adequate quality. Food security encompasses not only issues of food production and availability, but also storage, processing, and the regular provision of food products to the population. In the context of global climate change, economic challenges, and political instability, the issue of food security becomes particularly significant for the country's development and the preservation of social, economic, and political stability.

Certain problematic aspects related to food security have been addressed in the scholarly works of H.N. Alishov, Kh.A. Hryhoriieva, Ya.A. Zhalilo, I.V. Ihnatenko, V.H. Mazurenko, K.M. Rechka, among others. However, despite the considerable body of theoretical research, the scientific literature still lacks a comprehensive definition of the concept of food security, as well as a systematic analysis of the challenges to its provision under current conditions.

Accordingly, the aim of this article is to propose an authorial definition of the concept of food security and to highlight the key challenges to its provision in the modern context.

2. Priorities in Ensuring an Adequate Level of Food Security

Food security is achieved through various sectors, among which agriculture occupies a central position. This is confirmed by the fact that agriculture serves as the foundation of Ukraine's agro-industrial complex. The latter represents a set of national economic sectors encompassing agriculture, fisheries, the food industry, and agricultural processing, along

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with their material, technical, and financial support. Agriculture contributes to food, economic, environmental, and energy security, and promotes the development of technologically interconnected industries and the socio-economic foundations of rural development. In Ukraine, the agricultural sector accounts for approximately 10% of GDP and nearly 40% of export revenues (Ukraine: Rural Dominion, 2024).

O.V. Fraier emphasizes that thanks to the comprehensive research conducted by UN environmental commissions, the Club of Rome, and other international organizations, a scientifically grounded understanding of the current environmental crisis has been developed. This facilitated the formulation of conceptual foundations for harmonizing socio-economic and environmental development, which were reflected in the concept of sustainable development. Over recent decades, the principles of sustainable development have attracted significant interest from scholars, policymakers, and economic actors. In the second half of the 20th century, the problem of the imbalance between the growing needs of society and the limited resources of the biosphere became more acute, posing a threat not only to individual ecosystems but to humanity as a whole. Modern civilization faces the necessity of environmentally safe development, in which agriculture plays a crucial role.

The key principles of sustainable development in the agricultural sector—as a core component of the agri-food system—are aimed at balancing the growth of agricultural production, the stability of social life in rural areas, and the preservation of the natural environment. This highlights the need for simultaneous economic growth, environmental protection, social progress, and the improvement of the socio-cultural standards of rural life (Fraier, 2018).

Currently, Ukraine's top priority in ensuring an adequate level of food security is to saturate the domestic market with domestically produced agricultural and food products. This goal is supported by implementing elements of an agricultural protectionism strategy. According to experts, state support for the sector is among the most important aspects of addressing the country's food security challenges at the current stage. The importance of the agro-industrial complex must be reassessed within the national economy, and the strategy for its reform should be revised to account for the need to reduce threats to food security. Ukraine must also develop an effective mechanism for protecting its national interests in international relations while addressing food-related issues (Zhalilo, 2011).

So, what exactly is meant by the concept of food security? According to paragraph 2.13 of the Law of Ukraine *"On State Support for Agriculture of Ukraine,"* food security is defined as *"the protection of the vital interests of individuals, which is expressed in the state's guarantee of unhindered economic access to food in order to maintain normal human life activity"* (Law of Ukraine on State Support for the Agricultural Sector, 2004). Despite this legislative definition, numerous interpretations of this scientific category exist in academic literature.

3. The Formation of the Concept of "Food Security"

According to Ya.A. Zhalilo, food security is the level of food provision to the population that ensures socio-economic and political stability within society, sustainable and high-quality development of the nation, the family, and the individual, as well as the sustainable economic growth of the state (Zhalilo, 2011).

V.V. Mushenko views national food security as the state's guaranteed ability, based on the principle of self-sufficiency in essential food products and their economic and physical accessibility, to meet the needs of the population—each individual citizen included—with food of appropriate quantity, variety, and quality, regardless of external and internal factors, at a level that supports human health and intellectual development (Mushenko, 2011).

H.M. Alishov defines state food security as the degree to which the population is provided with ecologically clean and health-beneficial domestically produced food, in accordance with scientifically grounded norms and at affordable prices, while also preserving and improving the living environment (Alishov, 2017).

A.R. Arakelova, A.Ye. Hrynko, and Yu.V. Yevtifiieva interpret food security as the condition of a state's economy whereby the population as a whole, as well as each individual, is guaranteed access to food, drinking water, and other food products of the quality, variety, and quantity necessary and sufficient for physical and social development, as well as for ensuring public health (Arakelova, Hrynko, Yevtifiieva, 2022).

V.O. Zubko emphasizes that the food sector should be understood as a set of social relations arising in the process of ensuring unimpeded economic access to food for the purpose of maintaining normal life activity. He identifies specific features of the food sector as a subject of administrative-legal regulation, which include: the presence of specially authorized public administration entities with powers in the food sector; the substantive orientation of public administration tools towards regulation of the food sphere; the possibility of applying control and supervisory measures to ensure compliance with the law; and the possibility

of imposing administrative liability for violations in the food sector (Zubko, 2024).

I.V. Ihnatenko, A.S. Krechyk, and K.O. Perepelytsia point out that food security is often addressed at the national level, primarily in terms of reducing excessive dependence on food imports through domestic market saturation with national products. However, they also stress that this approach is the subject of academic debate, with many Western scholars moving away from national and regional perspectives. Instead, they argue for a global or international level of analysis, noting that food security is not only an economic category but also one concerned with guaranteeing the right to food access (Ihnatenko, Krechyk, Perepelytsia, 2014).

Analyzing several scholarly concepts, R. Mudrak, V. Lahodiienko, A. Osipova, O. Froter, and K. Sokoliuk conclude that many researchers define food security through four key criteria:

1. **Physical availability** – the presence of sufficient food of appropriate type and quality throughout the country, regardless of the food's origin (national production, reserves, imports, or food aid).

2. **Economic and physical access** – all citizens must have access to the necessary resources for acquiring food, including financial means and access rights to resources for producing or obtaining food. Physical access implies that people, regardless of their physical condition, must be able to obtain food without barriers.

3. **Stability of access** – uninterrupted access to sufficient food for all citizens, even during natural disasters, economic disruptions, or military conflicts.

4. **Safe food consumption** – the ability to consume food safely and in a way that supports health, including proper preparation and storage practices aligned with modern sanitary and hygiene standards, as well as access to safe drinking water (Mudrak, Lahodiienko, Osipova, Froter, Sokoliuk, 2024).

According to the **1996 World Food Summit**, *"Food security exists when all people, at all times, have physical and economic access to sufficient, safe, and nutritious food to meet their dietary needs and food preferences for an active and healthy life"* [12]. The Summit outlined four core dimensions of food security:

1. **Food availability** – related to the "supply side" of food security, determined by levels of food production, stockpiles, and net trade.

2. **Economic and physical access to food** – the mere presence of food at the national or international level does not guarantee food security at the household level. Concerns about inadequate food access have led to policy focus on income, expenditures, markets, and prices.

3. **Food utilization** – refers to how the body uses nutrients from food. Adequate energy and nutrient intake result from good care and feeding practices, food preparation, dietary diversity, and intra-household food distribution. Together with biological use of food, these determine nutritional status.

4. **Stability** – even if one's food intake is adequate today, food security is not ensured if there is periodic or seasonal lack of access. Adverse weather, political instability, or economic factors (e.g., unemployment, rising food prices) may compromise food access over time (*What is Food Security?*, 2023).

4. Conclusion

In light of the above, food security can be defined as a condition in which all individuals have consistent, uninterrupted physical and economic access to sufficient, safe, and nutritious food that meets their dietary needs and preferences for an active and healthy life. The importance of food security lies in its direct impact on public health, economic stability, and the national security of the state as a whole.

Furthermore, it is reasonable to conclude that ensuring food security contributes to reducing hunger and poverty while simultaneously promoting sustainable agricultural practices, efficient food distribution systems, and resilient supply chains for various types of food products. Achieving food security is virtually impossible without active government support and international cooperation.

The absence of food security affects billions of people worldwide, depriving them of the fundamental right to access nutritious food, and in some cases, resulting in devastating consequences for individuals and society. The war in Ukraine has had a negative impact on food security and the functioning of agriculture not only within the country but across Europe, contributing to rising inflation and, consequently, increased costs of goods and services. These developments present short- and medium-term challenges.

Nevertheless, promising efforts by individuals, organizations, and governments to combat food insecurity are increasing. Therefore, the importance of coordinated international cooperation in addressing this crisis cannot be overstated.

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ПОНЯТТЯ ПРОДОВОЛЬЧОЇ БЕЗПЕКИ, А ТАКОЖ ПРОБЛЕМИ ЇЇ ЗАБЕЗПЕЧЕННЯ В СУЧАСНИХ УМОВАХ

Анотація. ***Мета*** статті полягає у формулюванні авторського визначення поняття продовольчої безпеки, а також виділити проблеми її забезпечення в сучасних умовах. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених, запропоновано авторське поняття продовольчої безпеки. Виділено ключові аспекти продовольчої безпеки. Акцентовано увагу на тому, що війна в Україні негативно впливає на продовольчу безпеку та функціонування сільського господарства не тільки в нашій країні, але й у всій Європі, призводячи до зростання рівня інфляції, а відтак і зростання вартості товарів та послуг. Значущість продовольчої безпеки полягає в її впливі на здоров'я населення, економічну стабільність і національну безпеку держави в цілому. Окрім того, з огляду на зазначене вище, цілком справедливим буде констатувати, що забезпечення продовольчої безпеки означає зменшення голоду, бідності, одночасно сприяючи сталим сільськогосподарським практикам, ефективним системам розподілу продовольства та стійким ланцюгам постачання продовольчих товарів різноманітного характеру. Забезпечення продовольчої безпеки є фактично неможливим без державної активної підтримки та міжнародної співпраці. В умовах глобальних змін клімату, економічних викликів і політичної нестабільності питання продовольчої безпеки набуває особливого значення для розвитку країни та збереження соціальної, економічної та політичної стабільності. ***Висновки.*** Таким чином, відсутність продовольчої безпеки впливає на мільярди людей у всьому світі, позбавляючи їх основного права на доступ до поживної їжі, а в окремих випадках призводячи до жахливих наслідків для окремих людей та суспільства. Війна в Україні негативно впливає на продовольчу безпеку та функціонування сільського господарства не тільки в нашій країні, але й у всій Європі, призводячи до зростання рівня інфляції, а відтак і зростання вартості товарів та послуг. Все це створює проблеми на коротко- та середньострокову перспективу. Проте багатообіцяючі зусилля, які докладають окремі особи, організації та уряди для боротьби з продовольчою безпекою, зростають. А відтак, неможливо переоцінити важливість спільної роботи всіх держав щодо подолання цієї кризи.

Ключові слова: безпека, продовольча безпека, сільськогосподарська продукція, сільське господарство.

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CRIME COMBATING AS ONE OF THE MAIN AREAS OF INTERNATIONAL COOPERATION INVOLVING THE NATIONAL POLICE

Abstract. ***Purpose.*** The purpose of the article is to describe crime combating as one of the main areas of international cooperation involving the National Police of Ukraine. ***Results.*** In the context of large-scale globalisation processes, transnational crime is increasingly widespread, as open borders lead to significant migration dynamics, including many representatives of the criminal world. In this regard, the National Police of Ukraine, in cooperation with international law enforcement organisations such as Interpol and Europol, as well as individual states, combats crimes that are punishable under national and foreign law. It is established that the main areas of counteraction to this type of crime are: creation of a legal framework, organisational, logistical and other conditions for effective combating organised crime, organisation of international cooperation in this area; identification and elimination or neutralisation of negative social processes and phenomena which give rise to organised crime and contribute to it; prevention of harm to individuals, society, and the state; prevention of the emergence of organised criminal groups; detection, investigation, elimination and prevention of offences committed by members of organised criminal groups, and bringing the perpetrators to justice; compensation for damage to individuals, legal entities, and the state; prevention of establishing corrupt ties with public servants and officials and their involvement in criminal activities; counteraction to the use of civil society and media associations by members of organised criminal groups in their interests; prevention of money laundering and the use of business entities for criminal intentions. ***Conclusions.*** In this article, relying on the analysis of scientific views of scholars, provisions of current legislation and law enforcement practice, the author reveals the essence of crime combating as one of the main areas of international cooperation involving the National Police. It is proved that this area is the most consistent with the competence, powers and tasks of the National Police of Ukraine, and contributes to their efficient performance and overall development of police mechanisms in accordance with international standards and the most positive foreign practices.

Key words: crime combating, transnational crime, international cooperation, National Police of Ukraine.

1. Introduction

According to Articles 1 and 2 of the Law of Ukraine 'On the National Police', the National Police is a central executive body that serves the public by ensuring the protection of human rights and freedoms, combating crime, and maintaining public security and order. The tasks of the Police are to provide police services in the following areas: 1) public safety and order; 2) protection of human rights and freedoms, as well as interests of society and the state; 3) crime combating; 4) assistance services to persons who need such assistance for personal, economic, social reasons or as a result of emergency situations, within the limits established by law (Law of Ukraine On the National Police, 2015). The NPU organises and implements international cooperation in all areas of its activities within the scope of its competence provided by law, but the most active such cooperation is in the area of combating crime.

Nowadays, in the legal field, there is a significant scientific body of work devoted to the legal, organisational, political and other principles of combating crime with the participation of various state authorities in our country. For example, this issue has been addressed by: V.V. Vasylevych, V.N. Driemin, O.M. Dzhuzha, A.P. Zakaliuk, A.P. Zapototskyi, R.O. Movchan, O. H. Kolb, I.S. Timush, as well as many other

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scholars. However, despite a significant number of theoretical developments, the issue of combating crime as one of the main areas of international cooperation with the participation of the National Police of Ukraine is insufficiently developed in the scientific literature.

Therefore, the purpose of the article is to describe crime combating as one of the main areas of international cooperation involving the National Police of Ukraine.

2. The National Police of Ukraine in cooperation with international law enforcement organisations

To begin our research, we should note that crime is a rather massive, historically variable, social, criminal law phenomenon of class society, which is the totality of all offences committed in a particular state over a certain period of time (Boiko, 2009). In some cases, the activities of criminal groups go beyond the borders of the state and have negative social consequences for the population of several countries at once, that is, they become transnational. According to the United Nations Convention against Transnational Organised Crime of November 15, 2000, a crime is transnational in nature if: a) it is committed in more than one State; b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; c) it is committed in one State, but involves an organised criminal group that engages in criminal activities in more than one State; d) it is committed in one State but has substantial effects in another State" (United Nations Convention against Transnational Organized Crime, 2000).

In the context of large-scale globalisation processes, transnational crime is increasingly widespread, as open borders lead to significant migration dynamics, including many representatives of the criminal world. In this regard, the National Police of Ukraine, in cooperation with international law enforcement organisations such as Interpol and Europol, as well as individual states, combats crimes that are punishable under national and foreign law.

For example, according to the Law of Ukraine 'On the Organisational and Legal Framework for Combating Organised Crime', the main areas of counteraction to this type of crime are: creation of a legal framework, organisational, logistical and other conditions for effective combating organised crime, organisation of international cooperation in this area; identification and elimination or neutralisation of negative social processes and phenomena which give rise to organised crime and contribute to it; prevention of harm to individuals, society, and the state; prevention of the emergence of organised criminal groups; detection, investigation, elimination and prevention of offences committed by members of organised criminal groups, and bringing the perpetrators to justice; compensation for damage to individuals, legal entities, and the state; prevention of establishing corrupt ties with public servants and officials and their involvement in criminal activities; counteraction to the use of civil society and media associations by members of organised criminal groups in their interests; prevention of money laundering and the use of business entities for criminal intentions. International cooperation in combating organised crime is based on the provisions of international law and current legislation of Ukraine, interstate and intergovernmental treaties, bilateral departmental agreements (Law of Ukraine On organizational and legal framework for combating organized crime, 1993).

In the course of international cooperation to combat and prevent organised crime in 2024, operational officers of the Strategic Investigations Department, investigators of the Main Investigation Department of the National Police under the procedural guidance of the Prosecutor General's Office in cooperation with Europol, Eurojust and law enforcement agencies of the Republic of Moldova and Romania eliminated the activities of a criminal group whose members 'specialised' in extorting money from gullible citizens through call centres. Citizens of Ukraine, who, together with representatives of other states, ensured the operation of four call centres in several cities of the Republic of Moldova, employing about 400, peoplewere involved in organising a large-scale international fraud scheme (Official web portal of the Ministry of Internal Affairs of Ukraine, 2024).

Active international cooperation continues in combating drug-related crimes. In Ukraine, in accordance with the Law of Ukraine 'On measures to counteract the illicit trafficking in narcotic drugs, psychotropic substances and precursors and their abuse', the NPU is part of the system of bodies responsible for counteracting and combating illicit trafficking in narcotic drugs (Law of Ukraine On Measures to Counteract Illicit Trafficking in Narcotic Drugs, Psychotropic Substances and Precursors and Their Abuse, 1995).

In some cases, drug-related crimes are committed simultaneously on the territory of several states by criminal groups, which makes it impossible to stop their activities without a combination of forces and means of national and foreign authorities. For example, in 2024, as part of international cooperation under the procedural guidance of the Prosecutor General's Office, operational officers of the Department for

Combating Drug Crimes, together with investigators of the Main Investigation Department of the National Police and specialised territorial police units, KORD and PPOP special forces in the capital, Dnipro, Kyiv, Cherkasy and Zaporizhzhia regions, with the assistance of the Drug Crime Department of the Main National Police in these regions, in cooperation with Europol and the Department for Combating Organised Drug Crime of the Central Bureau of Investigation, conducted a in cooperation with Europol and the Department for Combating Organised Drug Crime of the Central Bureau of Investigation of the Polish Police, with the support of the Bureau of Anti-Terrorist Operations of the Police 'BOA', exposed the illegal activities of a drug group. Ukrainian and Polish law enforcement officers conducted a large-scale special operation that resulted in the liquidation of the production sites of narcotic drugs and psychotropic substances. The drug labs in Ukraine and Poland produced crystalline methadone and synthetic cathinones such as mephedrone and Alpha-PVP. As part of the investigation, searches were conducted at 38 facilities where drugs, precursors, chemicals and production equipment were produced or stored. Ukrainian law enforcement officers directly served five people with a notice of suspicion of illegal production, manufacture, acquisition, storage, transportation, shipment or sale of narcotic drugs, psychotropic substances or their analogues on a particularly large scale (Official Web Portal of the Prosecutor General's Office, 2024).

3. International cooperation in combating crime

International cooperation in combating crime covers counteracting trafficking in human beings as a separate and rather massive type of criminal activity. At the level of national legislation, the Law of Ukraine 'On Combating Trafficking in Human Beings' No.3739-VI of September 20, 2011 addresses this issue. According to the articles of the law, anti-trafficking is an integral part of the activities of the National Police in combating crime, which, in particular, take measures to identify crimes of human trafficking, victims of human trafficking, identify traffickers and bring them to justice through the implementation of organisational, operational and investigative, administrative and legal, procedural, analytical and research, information and other measures. The tasks of combating human trafficking are as follows: 1) to identify the causes and preconditions that facilitate human trafficking and take measures to eliminate them; 2) to ensure the safety of persons recognised as victims of human trafficking, witnesses and other persons involved in criminal proceedings in cases of human trafficking; 3) to detect and investigate crimes related to human trafficking; 4) to bring to justice, including criminal liability, persons involved in human trafficking; 5) to ensure the restoration of the rights of victims of human trafficking; 6) to inform the entities involved in the field of combating human trafficking and the public about the results of activities in the field of combating human trafficking. In addition, Article 28 of the Law provides that Ukraine participates in international cooperation in combating human trafficking at the state, regional and local levels. Entities carrying out activities in the field of combating human trafficking have the right to conclude cooperation agreements and establish direct relations with the relevant authorities of foreign countries and international organisations in accordance with the legislation of Ukraine. The state supports and encourages international cooperation in combating this type of criminal offence (Law of Ukraine On Combating Trafficking in Human Beings, 2011).

An example of effective international counteraction to human trafficking is the elimination in 2018 of a transnational group that recruited Ukrainians to transport illegal immigrants. Employees of the Department for Combating Illegal Trafficking in Human Beings (currently the Migration Police Department) together with investigators of the Main Investigation Department of the National Police, under the procedural supervision of the Prosecutor General's Office, stopped the activities of a transnational criminal group that had been providing an international channel for human trafficking from Ukraine for three years. Both Ukrainian law enforcement and foreign colleagues from the UK, Greece, Turkey and Italy, with the support of Interpol and Europol, were involved in documenting this criminal network. The main task of the criminals was to recruit Ukrainians to work as labourers for the transportation of illegal migrants from North Africa to Europe. The recruits did not understand that they were committing a crime (Official web portal of the Ministry of Internal Affairs of Ukraine, 2024).

4. Conclusions

Therefore, given the current realities of the law enforcement system and the challenges faced by the National Police of Ukraine, international cooperation in combating crime is of the highest priority. This area seems the most consistent with the competence, powers and tasks of the NPU, and contributes to their efficient performance and overall development of police mechanisms in accordance with international standards and the most positive foreign practices.

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БОРОТЬБА ЗІ ЗЛОЧИННІСТЮ, ЯК ОДНА З ОСНОВНИХ СФЕР МІЖНАРОДНОГО СПІВРОБІТНИЦТВА ЗА УЧАСТЮ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ

Анотація. ***Метою*** статті є охарактеризувати боротьбу зі злочинністю як один з основних напрямів міжнародного співробітництва за участі Національної поліції України. ***Результати.*** В умовах масштабних глобалізаційних процесів злочинність транснаціонального змісту набуває все більшого поширення, адже відкриті кордони зумовлюють суттєву динаміку міграції людей, серед яких багато представників кримінального світу. У зв'язку із цим, Національна поліція України у співпраці із міжнародними правоохоронними організаціями, такими як Інтерпол та Європол, а також окремими державами, забезпечує протидію злочинам, що є кримінально-караними відповідно до національного та зарубіжного законодавства. З'ясовано, що основними напрямами протидії даному типу злочинності є: створення правової основи, організаційних, матеріально-технічних та інших умов для ефективної боротьби з організованою злочинністю, організація міжнародного співробітництва у цій сфері; виявлення та усунення або нейтралізація негативних соціальних процесів і явищ, що породжують організовану злочинність та сприяють їй; запобігання нанесенню шкоди людині, суспільству, державі; запобігання виникненню організованих злочинних угруповань; виявлення, розслідування, припинення і запобігання правопорушенням, вчинюваним учасниками організованих злочинних угруповань, притягнення винних до відповідальності; забезпечення відшкодування шкоди фізичним та юридичним особам, державі; запобігання встановленню корумпованих зв'язків з державними службовцями та посадовими особами, втягненню їх у злочинну діяльність; протидія використанню учасниками організованих злочинних угруповань у своїх інтересах об'єднань громадян і медіа; запобігання легалізації коштів, здобутих злочинним шляхом, використанню суб'єктів підприємницької діяльності для реалізації злочинних намірів. ***Conclusions.*** У статті, спираючись на аналіз наукових поглядів вчених, норм чинного законодавства та правозастосовної практики, розкрито сутність боротьби зі злочинністю, як однієї з основних сфер міжнародного співробітництва за участю Національної поліції. Аргументовано, що саме даний напрямок найбільше відповідає компетенції, повноваженням та завданням Національної поліції України, сприяє їх якісному виконанню та загальному розвитку механізмів поліцейської діяльності згідно до міжнародних стандартів та найбільш позитивних іноземних практик.

Ключові слова: боротьба зі злочинністю, транснаціональна злочинність, міжнародне співробітництво, Національна поліція України.

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Komar, Andrii (2024). Toward a characterization of the institutional component of guarantees for the provision of free legal aid by advocates. *Entrepreneurship, Economy and Law,* 1, 75–79, doi https://doi.org/10.32849/2663-5313/2024.1.13

TOWARD A CHARACTERIZATION OF THE INSTITUTIONAL COMPONENT OF GUARANTEES FOR THE PROVISION OF FREE LEGAL AID BY ADVOCATES

Abstract. ***Purpose.*** The aim of this article is to provide a detailed characterization of the institutional component of the guarantees for the provision of free legal aid by advocates. ***Results.*** Based on the scholarly views of legal researchers, the article offers the author's original definition of the concept of the institutional component of guarantees for the provision of free legal aid by advocates. It is established that local self-government bodies may create specialized institutions for the provision of primary free legal aid, taking into account the needs of the territorial community. According to paragraph 4 of part 1 of Article 9 of the Law of Ukraine "On Free Legal Aid," such institutions should be considered a distinct group within the overall system of actors forming the institutional component of free legal aid provision by advocates. This is due to the frequent necessity of involving an advocate in order to strengthen the professional aspect of the legal aid provided. ***Conclusions.*** The article concludes that the institutional component of the guarantees for the provision of free legal aid by advocates comprises numerous actors who not only deliver relevant legal services, but also bear responsibility for the overall functioning of this sphere of public relations across various domains. These actors are examined as a system consisting of: 1) entities responsible for ensuring and guaranteeing the provision of free legal aid by advocates: a) national-level entities – the Verkhovna Rada of Ukraine, the President of Ukraine, and the Cabinet of Ministers of Ukraine; b) entities responsible for formulating and implementing state policy in the sphere of free legal aid – the Ministry of Justice of Ukraine and the Coordination Center for Legal Aid Provision; 2) providers of free legal aid: a) the bar – advocates and bodies of advocate self-governance; b) entities that interact with advocates and engage them in the provision of free legal aid – free legal aid centers and local self-government bodies; 3) entities involved in social and legal protection that cooperate with advocates in the course of providing free legal aid.

Key words: institutional component, public authorities, legal guarantees, free legal aid, legal assistance.

1. Introduction

2. Features of the institutional component of guarantees for the provision of free legal aid by advocates

At the outset of this research, it should be emphasized that the institutional component of the guarantees for the provision of free legal aid by advocates should be understood as a system of entities defined at the regulatory and legal level, whose activities are aimed at ensuring and safeguarding the exercise of an individual's right to receive, in legislatively defined cases, a specific type of legal services free of charge. This conceptual approach to the essence of the institutional component of the guarantees for the provision of free legal aid by advocates highlights the significant number of state-authorized entities whose activities are, in one way or another, related not only to the direct provision of free legal aid but also to the stable functioning of this area of public relations.

First and foremost, it is necessary to identify the national-level entities which, by adopting appropriate normative legal acts, define the legal framework for the implementation of guarantees for the provision of free legal aid by advocates. Among such entities is the Verkhovna Rada of Ukraine. According to Article 85 of the Constitution of Ukraine, its powers in the context of ensuring the implementation of these guarantees include: amending the Constitution of Ukraine within the lim-

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its and procedure established by law; adopting laws; approving and amending the State Budget of Ukraine, overseeing its execution, and making decisions on the report on its execution; reviewing and approving the Programme of the Cabinet of Ministers of Ukraine; exercising control over the activities of the Cabinet of Ministers of Ukraine in accordance with the law; and granting consent to the binding nature of international treaties of Ukraine and their denunciation (Constitution of Ukraine, 1996).

Attention should also be given to the powers of the President of Ukraine in ensuring the implementation of guarantees for the provision of free legal aid by advocates. As follows from Article 106 of the Constitution of Ukraine, these powers include: suspending acts of the Cabinet of Ministers of Ukraine on the grounds of their non-compliance with the Constitution, while simultaneously appealing to the Constitutional Court of Ukraine regarding their constitutionality; signing laws adopted by the Verkhovna Rada of Ukraine; exercising the right of veto concerning laws passed by the Verkhovna Rada of Ukraine (except laws amending the Constitution of Ukraine) with their subsequent return for repeated consideration by Parliament; and issuing decrees and orders that are mandatory throughout the territory of Ukraine (Constitution of Ukraine, 1996).

A special role within the system of the entities under study belongs to the Cabinet of Ministers of Ukraine, which is vested with a broad range of powers in ensuring the implementation of guarantees for the provision of free legal aid by advocates. According to Article 20 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" dated February 27, 2014, the Cabinet of Ministers has the following powers in the field of legal policy, legality, and the protection of human and civil rights and freedoms: it ensures the implementation of state legal policy; exercises control over the observance of legislation by executive authorities, their officials, as well as by local self-government bodies in the performance of delegated powers of executive authorities; creates conditions for the free development and functioning of the system of legal services and legal aid for the population; takes measures to ensure the operation of the free legal aid system; and ensures social and legal protection of persons for whom the fact of deprivation of personal liberty as a result of armed aggression against Ukraine has been established, as well as their family members, in accordance with the Law of Ukraine "On Social and Legal Protection of Persons in Respect of Whom the Fact of Deprivation of Personal Liberty as a Result of Armed Aggression Against Ukraine Has Been Established, and Their Family Members" (Law of Ukraine On the Cabinet of Ministers of Ukraine, 2014; Law of Ukraine On Social and Legal Protection..., 2022).

As follows from the analysis of the aforementioned legislative provisions, the specified group of entities involved in ensuring the realization of guarantees for the provision of free legal aid by attorneys may be designated as nationwide. This is due to the fact that this area of their activity is not primary, but rather conditioned by the need to carry out state governance not only in this sphere of social life but also in many others. In this regard, it is necessary to identify those entities that constitute the institutional component of the guarantees for the provision of free legal aid by attorneys, for whom the functioning of this area of social relations is one of the main directions of their activity.

Among such entities, the bodies and subdivisions of the Ministry of Justice of Ukraine should be named. According to the provisions of the Regulation "On the Ministry of Justice of Ukraine," approved by the Resolution of the Cabinet of Ministers of Ukraine dated July 2, 2014, No. 228, the Ministry is the main body in the system of central executive authorities responsible for the formation and implementation of state legal policy, state bankruptcy policy, and policy in the field of prevention of debtor insolvency, in the field of notaries, enforcement of court decisions and decisions of other bodies (officials), state registration of civil status acts, state registration of property rights to real estate and their encumbrances, state registration of encumbrances on movable property, state registration of legal entities, public associations without legal entity status, individual entrepreneurs, and separate subdivisions of legal entities established under the legislation of a foreign state, etc. (Resolution of the Cabinet of Ministers of Ukraine On approval of the Regulation on the Ministry of Justice of Ukraine, 2014). From the above, it follows that the Ministry of Justice of Ukraine is responsible for a wide range of issues related to ensuring the functioning of various social relations, including the formation and implementation of policies by this central executive authority to ensure the realization of guarantees for the provision of free legal aid by attorneys.

The next group of subjects within the studied system, as an institutional component of the guarantees for the provision of free legal aid by attorneys, consists of the actual providers of such aid. According to a comprehensive analysis of Part 1 of Article 9 and Part 1 of Article 15 of the Law of Ukraine "On Free Legal Aid," the providers of free legal aid include: executive authorities; local self-gov-

ernment bodies; free legal aid centers; specialized institutions for providing primary legal aid established by local self-government bodies based on the needs of the territorial community; private legal entities authorized to provide legal aid and engaged by local self-government bodies in accordance with the law; attorneys and other specialists in the relevant field of law engaged by local self-government bodies in accordance with the law; and attorneys included in the Register of Attorneys Providing Free Secondary Legal Aid (Law of Ukraine On Free Legal Aid, 2011). Thus, in this case, we are referring to all providers of free legal aid and the related legal services within its scope without exception.

At the same time, considering the specifics of the issue under study, our interest lies in those entities that may be identified as the institutional component of the guarantees for the provision of free legal aid specifically by attorneys. Therefore, we consider it appropriate to divide them into two groups.

The first of these groups, in our opinion, should include the legal profession itself as an institutional component of the guarantees for the provision of free legal aid. According to Article 2 of the Law of Ukraine "On Advocacy and Advocacy Activities" dated July 5, 2012, the legal profession is a non-governmental self-governing institution that ensures the provision of defense, representation, and other types of legal assistance on a professional basis and independently decides on matters related to its organization and activities in accordance with the law. The legal profession of Ukraine consists of all attorneys who are authorized to practice law. In order to ensure proper legal practice, compliance with guarantees of advocacy, protection of attorneys' professional rights, maintaining a high level of professionalism among attorneys, and resolving matters of disciplinary liability, the system of attorney self-governance operates in Ukraine (Law of Ukraine On Advocacy and Advocacy Activities, 2012). From this it follows that one of the main institutional components of the guarantees for the provision of free legal aid by attorneys is the legal profession of Ukraine, which includes both attorneys and the bodies of attorney self-governance.

The second group of entities involved in the provision of free legal aid, as an institutional component of such guarantees, includes those that interact with attorneys within this sphere of social relations, thereby engaging them in this area of activity. Primarily, this group includes the free legal aid centers. According to Article 16 of the Law of Ukraine "On Free Legal Aid," the Ministry of Justice of Ukraine establishes regional (republican (of the Autonomous Republic of Crimea), oblast, Kyiv, and Sevastopol city), local (district, inter-district, city, city-district, inter-district and district in cities), and interregional (whose powers extend to several administrative-territorial units) centers for the provision of free legal aid. These centers are territorial branches of the Coordination Center for Legal Aid Provision and are established based on the needs of the respective administrative-territorial units to ensure access to free legal aid (Law of Ukraine On Free Legal Aid, 2011).

3. The Role of Local Self-Government Bodies in Establishing Specialized Institutions for the Provision of Free Primary Legal Aid

As stated in the Regulations on Centers for the Provision of Free Legal Aid, approved by the Order of the Ministry of Justice of Ukraine No. 967/5 dated July 2, 2012, centers for the provision of free legal aid are established, reorganized, and liquidated by the Ministry of Justice of Ukraine upon the proposal of the Coordination Center, taking into account the needs of the relevant administrative-territorial unit and ensuring individuals' access to free legal aid. These centers serve as territorial branches of the Coordination Center. While performing their functions, they interact, among others, with bodies of attorney self-governance (Order of the Ministry of Justice of Ukraine On Approval of the Regulations on Centers for the Provision of Free Legal Aid, 2012). As an institutional component of the guarantees for the provision of free legal aid by attorneys, these centers can be characterized based on their numerous powers within this sphere of social relations. These powers can be grouped as follows: (1) powers related to information support of such activities; (2) powers related to financial support of such activities; (3) powers related to staffing such activities; (4) control and oversight powers; (5) other powers related to ensuring the implementation of guarantees for the provision of free legal aid by attorneys.

In addition, attention should be paid to local self-government bodies. According to the provisions of the Law of Ukraine "On Local Self-Government in Ukraine" dated May 21, 1997, local self-government in Ukraine is the right and real capacity of a territorial community–residents of a village or a voluntary association of several villages, a settlement, or a city–to independently or under the responsibility of local self-government bodies and officials, resolve matters of local importance within the limits of the Constitution and laws of Ukraine (Law of Ukraine On Local Self-Government in Ukraine, 1997). According to Part 7 of Article 12 of the Law of Ukraine "On Free Legal Aid," local self-government bodies may enter into agreements with attorneys and other

legal professionals to provide free primary legal aid within the relevant administrative-territorial unit (Law of Ukraine On Free Legal Aid, 2011). It should be noted that local self-government bodies may also establish specialized institutions for the provision of free primary legal aid, taking into account the needs of the territorial community. According to paragraph 4 of Part 1 of Article 9 of the Law of Ukraine "On Free Legal Aid," these institutions should be regarded as a separate group within the studied system of entities as an institutional component of the provision of free legal aid by attorneys. This is due to the fact that in the course of providing legal aid, it is often necessary to involve an attorney to strengthen the professional aspect of such activities.

From the analysis of the above-mentioned entities, it follows that the latter group of subjects, as part of the institutional structure of the guarantees for the provision of free legal aid by attorneys, may be created either by the decision of local self-government bodies or by the relevant executive authority. This points to yet another group of such subjects. A similar direction of activity is carried out by another group of entities that are part of the executive authorities and, according to paragraph 1 of Part 1 of Article 9 of the Law of Ukraine "On Free Legal Aid," may be characterized as an institutional component of the provision of free legal aid by attorneys. Examples of such entities include: support services for military personnel, members of the civil protection service, police officers, and their families; social rehabilitation centers (children's villages); social and psychological rehabilitation centers for children; rehabilitation centers for persons who have suffered from human trafficking.

4. Conclusion

Thus, as follows from the analysis of the above positions, the institutional component of the guarantees for the provision of free legal aid by attorneys is represented by numerous entities that not only provide the relevant legal services but are also generally responsible for the proper functioning of this sphere of social relations across various directions. Accordingly, these entities have been studied by us as a system composed of: (1) entities that ensure and guarantee the provision of free legal aid by attorneys: (a) nationwide entities – the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine; (b) entities responsible for the development and implementation of state policy in the field of free legal aid provision by attorneys – the Ministry of Justice of Ukraine, the Coordination Center for Legal Aid Provision; (2) entities that provide free legal aid: (a) the Bar – attorneys and bodies of attorney self-governance; (b) entities that interact with attorneys and thereby engage them in the implementation of free legal aid – legal aid centers, local self-government bodies; (3) entities of social and legal protection that interact with attorneys within the scope of providing free legal aid: (a) specialized institutions – shelters for persons who have suffered from domestic and/or gender-based violence; day centers for social and psychological assistance to persons affected by domestic and/or gender-based violence; centers for assistance to survivors; resilience centers; territorial centers for the provision of social services; etc.; (b) entities established within the structure of executive authorities – support services for military personnel, members of the civil protection service, police officers and their families; social rehabilitation center (children's village); social and psychological rehabilitation center for children; rehabilitation center for persons affected by human trafficking; etc.

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ДО ХАРАКТЕРИСТИКИ ІНСТИТУЦІЙНОЇ СКЛАДОВОЇ ГАРАНТІЙ НАДАННЯ БЕЗОПЛАТНОЇ ПРАВНИЧОЇ ДОПОМОГИ АДВОКАТАМИ

Анотація. ***Мета*** статті полягає у наданні характеристики інституційній складовій гарантій надання безоплатної правничої допомоги адвокатами. ***Результати.*** У статті, на основі наукових поглядів вчених, запропоновано авторське визначення поняття інституційної складової гарантій надання безоплатної правничої допомоги адвокатами. З'ясовано, що органи місцевого самоврядування можуть утворювати спеціалізовані установи з надання безоплатної первинної правничої допомоги з урахуванням потреб територіальної громади, яких з огляду на приписи п. 4 ч. 1 ст. 9 Закону України «Про безоплатну правничу допомогу» слід розглядати як окрему групу досліджуваної системи суб'єктів як інституційної складової надання безоплатної правничої допомоги адвокатами. Це пов'язано із тим, що в межах надання ними безоплатної правничої допомоги доволі часто виникає необхідність залучення саме адвоката задля посилення професійної складової такої діяльності. ***Висновки.*** Зроблено висновок, що інституційна складова гарантій надання безоплатної правничої допомоги адвокатами представлена чисельними суб'єктами, які не тільки надають відповідні правничі послуги, а й у цілому відповідальні за належне функціонування даної сфери суспільних відносин по найрізноманітнішим напрямам. З огляду на що такі суб'єкти досліджені нами як система, що утворена з: 1) суб'єктів, які забезпечують та гарантують надання безоплатної правничої допомоги адвокатами: а) загальнодержавні суб'єкти – Верховна Рада України, Президент України, Кабінет Міністрів України; б) суб'єкти, відповідальні за формування та реалізацію державної політики у сфері надання безоплатної правничої допомоги адвокатами – Міністерство юстиції України, Координаційний центр з надання правничої допомоги; 2) суб'єктів надання безоплатної правничої допомоги: а) адвокатура – адвокати, органи адвокатського самоврядування; б) суб'єкти, які взаємодіють з адвокатами внаслідок чого залучають їх до реалізації безоплатної правничої допомоги – центри з надання безоплатної правничої допомоги, органи місцевого самоврядування; 3) суб'єкти соціального та правового захисту, які в межах надання безоплатної правничої допомоги взаємодіють з адвокатами.

Ключові слова: інституційна складова, органи державної влади, юридичні гарантії, безоплатна правнича допомога, правнича допомога.

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THE CONCEPT OF THE ADMINISTRATIVE AND LEGAL MECHANISM FOR IMPLEMENTING THE STATE ANTI-CORRUPTION PROGRAM IN LINE WITH THE ANTI-CORRUPTION STRATEGY IN THE ACTIVITIES OF THE SECURITY SERVICE OF UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to propose the author's definition of the concept of the administrative and legal mechanism for implementing the state anti-corruption program in accordance with the Anti-Corruption Strategy in the activities of the Security Service of Ukraine. ***Results.*** Based on an analysis of scholarly opinions regarding the concepts of "mechanism," "legal mechanism," and "administrative and legal mechanism," the article proposes the author's definition of the administrative and legal mechanism for implementing the state anti-corruption program in the activities of the Security Service of Ukraine. It is defined that a legal mechanism in its classical sense is an instrumental and complex structure composed of various elements of the legal system, through which the implementation of legal norms, institutions, legal phenomena, or legally significant actions is ensured. This category demonstrates how the law influences socio-legal relations or enables the implementation of certain types of social activities. In turn, the administrative and legal mechanism is a sectoral type of legal mechanism, differing in that it consists of elements of an administrative and legal nature applied in the context of public governance relations. These are relations arising from the activities of state and local self-government bodies in the exercise of their public functions. An example is the activity of law enforcement agencies in ensuring legal order and security at local and national levels. This mechanism demonstrates how, and by what means – from the perspective of administrative law, including its legal basis, principles, methodology, and other elements – the functioning of state authorities takes place. ***Conclusions.*** It is concluded that the administrative and legal mechanism for implementing the state anti-corruption program in the activities of the Security Service of Ukraine represents a set of specific legal elements that ensure the regulation of socio-legal relations in the sphere of internal administrative activities of the Security Service, as well as the performance of a necessary range of procedures, measures, operations, and actions aimed at fulfilling the goals set by the state anti-corruption program, practically implementing anti-corruption policy in the Service's work, supporting and ensuring the legality of its activities, and increasing public trust in the institution.

Key words: legal mechanism, administrative and legal mechanism, anti-corruption program, Anti-Corruption Strategy, Security Service of Ukraine.

1. Introduction

The implementation of the state anti-corruption program in accordance with the nationwide Anti-Corruption Strategy within the Security Service of Ukraine (SSU) is a process that permeates the entire system of this law enforcement body. It is aimed at creating legal, organizational, material, technical, and other conditions for introducing the principles of the relevant state policy, which is achieved through the functioning of a specific, sectoral administrative and legal mechanism.

The essence and content of the concept of the administrative and legal mechanism have repeatedly attracted the attention of various scholars. In particular, this issue has been

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addressed by R.A. Kalyuzhnyi, L.A. Kopenkina, V.I. Melnyk, A.Y. Prysiazhniuk, T.I. Tarakhonych, N.P. Kharchenko, T.A. Shumeilo, among many others. However, despite significant theoretical achievements, this term has not been comprehensively studied in the context of certain specific issues – in particular, in the area of implementing the state anti-corruption program in accordance with the Anti-Corruption Strategy in the activities of the Security Service of Ukraine.

Therefore, the purpose of this article is to propose the author's definition of the concept of the administrative and legal mechanism for implementing the state anti-corruption program in line with the Anti-Corruption Strategy in the activities of the Security Service of Ukraine.

2. The Legal Nature of the Mechanism for Implementing the State Anti-Corruption Program in Accordance with the Anti-Corruption Strategy in the Activities of the Security Service of Ukraine

Etymologically, the word *mechanism* derives from the Greek term *mechane* – meaning machine or instrument. In explanatory dictionaries, this concept has several interpretations, the most common of which are: (1) a device that transmits or transforms motion; synonymous with a machine; (2) the internal structure or system of something; (3) a set of states and processes that constitute a certain physical, chemical, or other phenomenon (Kovalova, Kovryha, 2005). Thus, in its most general sense, a mechanism is a system of interrelated elements, arranged according to certain principles and functioning toward a common goal. The primary characteristic of a mechanism is its dynamic nature. That is why mechanisms are most often discussed in technical contexts, denoting devices or machines. However, it would be incorrect to limit this category exclusively to material objects.

The legal nature of a mechanism was analyzed by O.O. Semchyk, who concluded that this category is of a generalizing nature, describing a specific system of legal instruments used to implement law as a whole and the requirements of legal norms (Semchyk, 2009). S.S. Lukash emphasizes in his works that the legal mechanism is a system of legal tools designed to optimally organize various aspects of social life and is instrumental in nature (Drozd, 2016).

Some scholars equate the legal mechanism with the mechanism of legal regulation. For example, Y.O. Holikova holds the view that "by a mechanism, we mean a system of specific elements that are interconnected and share a common goal. From this, we can conclude that any mechanism has an internally organized structure, the elements of which are interrelated and subordinated to one another. When we consider a mechanism from the perspective of legal science, we observe the general mechanism of legal regulation, which also has its own structure." According to her, the mechanism of legal regulation is a system of legal tools that influence social relations for the purpose of regulation, enforcement, etc. The main objective of the legal regulation mechanism is to organize and satisfy the needs and interests of subjects. This is achieved through legal instruments of influence that share a common goal – the effectiveness and efficiency of the mechanism's operation. The components of the legal regulation mechanism, according to the author, include: (1) legal norms establishing behavioral rules; (2) legal relations as a real-life element of law; (3) acts of exercising legal rights and obligations, i.e., the actual behavior of subjects in legal relations (Holikova, 2012).

At the same time, L.V. Yarmola challenges this view. He defines the legal mechanism for ensuring human rights in Ukraine as a system of effective legal means (guarantees) for the realization, protection, and safeguarding of human rights enshrined in legal acts and other sources of law, as well as the means through which a person's legal awareness is formed. In his view, the mechanism for ensuring human rights consists of the following elements: (1) national legislation (including ratified international treaties as part of it), which proclaims human rights; (2) a mechanism for forming legal awareness; (3) a legal mechanism for the realization of human rights; (4) a legal mechanism for the protection of human rights; (5) a legal mechanism for the defense of human rights. He further notes that the mechanism for forming legal awareness includes tools by which a person's consciousness is "filled" with a system of concepts, views, perceptions, emotions, and feelings regarding natural law and existing, past, or desired law. The legal mechanism for the realization of human rights includes legal tools aimed at implementing these rights in practice. The legal mechanism for the protection of human rights functions when the rights have not yet been violated and all tools are directed at preventing such violations. The legal mechanism for the defense of human rights, in his view, encompasses a set of legal guarantees through which violations are stopped, obstacles to realization are removed, and the possibilities of a person are restored, recognized, or reaffirmed (Iarmol, 2021).

There is also considerable scholarly debate among administrative law experts regarding the interpretation of the term *mechanism*, which is frequently used in conjunction with various phenomena, though it lacks a precise definition.

For instance, V.V. Myrhorod-Karpova defines the administrative and legal mechanism for ensuring control over international finances as an interrelated and interdependent system of measures and tools implemented by public authorities and local self-government bodies, in the manner and within the limits established by administrative and legal norms, aimed at creating all necessary conditions for the effective exercise of control over international finances (Myrhorod-Karpova, 2018).

3. Administrative and Legal Mechanism of State–Public Interaction in the Implementation of the State Anti-Corruption Program in Accordance with the Anti-Corruption Strategy

The administrative and legal mechanism of interaction between the state and the public in modern Ukraine is defined by A. Mykolaiets as a system of interconnected elements, based on administrative and legal requirements and formed through the use of administrative and legal tools. This system includes administrative and legal means that ensure the legal consolidation, protection, and safeguarding of interaction between the state and the public. It facilitates effective and systematic mutual connection between these actors, establishes continuous communication, identifies public needs–which guide public administration–and enables the pooling of shared resources to address tasks of general social importance (Mykolaiets, 2021).

S.V. Sirko interprets the mechanism of administrative and legal support for volunteer activities as a process of organizing social relations arising in the field of volunteerism and as a system of specific legal instruments through which the state regulates the behavior of the actors involved, thereby fulfilling its regulatory and protective functions to guarantee their rights, freedoms, and legitimate interests. Reflecting on the essence of this concept, the scholar arrives at several conclusions: the mechanism of administrative and legal support for volunteer activity can be viewed through the lens of the mechanism of legal regulation, since it is one of the leading categories in administrative law, used to effectively influence the behavior of legal subjects. It performs tasks closely related to the category of legal support. This mechanism regulates all social relations arising within the field of volunteer activity, and its main objective is the organization of all possible social relations in this area. It is, by nature, a process–a directed movement aimed at achieving a specific goal. Its distinguishing features are the range of participants affected and the mode of their behavior. The mechanism initially establishes the behavior of certain participants by codifying it in legal norms, and only afterward do these norms come into effect and begin to be implemented. Its main goal is to establish specific legal foundations that ensure the legitimate rights and interests of the participants in these relations and serve as a guarantee of public societal interests in this area (Sirko, 2018).

Ya.V. Lazur defines the administrative and legal mechanism for ensuring the rights and freedoms of citizens in the sphere of public administration as the activity of state and local self-government bodies aimed at creating appropriate conditions for the realization, protection, and defense of the rights and freedoms of citizens from unlawful actions through the application of material and procedural legal means and methods (Lazur, 2011).

The above analysis allows us to conclude that the legal mechanism, in its classical sense, is an instrumental, complex construct consisting of various elements of the legal system through which the implementation of legal norms, institutions, legal phenomena, or legally significant actions is ensured. This category illustrates how exactly law influences social and legal relations or how certain types of social activity are implemented. In turn, the administrative and legal mechanism is a sectoral type of legal mechanism, differing in that its content consists of elements of an administrative and legal nature, applied in the context of public administration relations. These are relations arising from the activities of public authorities and local self-government bodies in the process of carrying out their public functions. An example is the activity of law enforcement bodies in ensuring legal order and security at local and national levels. This mechanism shows how, and by what means–through the lens of administrative law, its normative foundation, principles, methodology, and other components–the functioning of state bodies takes place.

4. Conclusion

In conclusion, it can be summarized that the administrative and legal mechanism for implementing the State Anti-Corruption Program in accordance with the Anti-Corruption Strategy within the activities of the Security Service of Ukraine (SSU) represents a complex of specialized legal elements that ensure the regulation of socio-legal relations in the sphere of the SSU's internal administrative activities. It also encompasses the necessary range of procedures, measures, operations, and actions aimed at achieving the objectives set by the State Anti-Corruption Program, the practical implementation of anti-corruption policy in the work of the SSU, the upholding and enforcement of legality in the functioning of this body, and the strengthening of public trust in it.

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ПОНЯТТЯ АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ АНТИКОРУПЦІЙНОЇ ПРОГРАМИ З ВИКОНАННЯ АНТИКОРУПЦІЙНОЇ СТРАТЕГІЇ В ДІЯЛЬНОСТІ СЛУЖБИ БЕЗПЕКИ УКРАЇНИ

Анотація. ***Метою*** статті є: запропонувати авторське визначення поняття адміністративно-правового механізму реалізації державної антикорупційної програми з виконання Антикорупційної стратегії в діяльності Служби безпеки України. ***Результати.*** У статті, спираючись на аналіз наукових поглядів вчених щодо розуміння таких понять, як «механізм», «правовий механізм» та «адміністративно-правовий механізм», запропоновано авторське визначення поняття адміністративно-правового механізму реалізації державної антикорупційної програми з виконання Антикорупційної стратегії в діяльності Служби безпеки України. Визначено, що правовий механізм в класичному розумінні – це інструментальна, комплексна конструкція, яку складають різноманітні елементи правової системи, за допомогою яких забезпечується реалізація правових норм, інститутів, юридичних явищ або юридично-значимих дій. Дана категорія показує: яким саме чином право впливає на суспільно-правові відносини, або реалізуються ті чи інші види суспільної діяльності. В свою чергу адміністративно-правовий механізм є галузевим різновидом правового з тією відмінністю, що його зміст складають елементи адміністративно-правового характеру, які застосовуються в контексті відносин публічного управління. Це відносини, що виникають з діяльності органів державної влади і місцевого самоврядування в процесі виконання ними публічних функцій. Прикладом є діяльність правоохоронних органів щодо забезпечення правового порядку, безпеки локального та національного масштабу, тощо. Даний механізм показує, за рахунок чого, та як з точки зору адміністративного права, його нормативного підґрунтя, принципів, методології та інших елементів відбувається функціонування державних органів. ***Висновки.*** Зроблено висновок, що адміністративно-правовий механізм реалізації державної антикорупційної програми з виконання Антикорупційної стратегії в діяльності Служби безпеки України, представляє собою комплекс спеціальних правових елементів, які забезпечують упорядкування суспільно-правових відносин в сфері внутрішньо-адміністративної діяльності Служби безпеки України, а також проведення необхідного кола процедур, заходів, операцій та дій із виконання поставлених державною антикорупційною програмою цілей, практичне втілення антикорупційної політики в роботі Служби, підтримку і забезпечення законності діяльності цього органу та підвищення довіри населення нього.

Ключові слова: правовий механізм, адміністративно-правовий механізм, антикорупційна програма, Антикорупційна стратегія, Служба безпеки України.

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SPECIFIC FEATURES OF INTERROGATION OF SUSPECTS DURING INVESTIGATION OF CRIMES COMMITTED BY TRANSNATIONAL ORGANISED CRIMINAL GROUPS

Abstract. ***Purpose.*** The purpose of the article is to study the specific features of interrogation of suspects during investigation of crimes committed by transnational organised criminal groups. ***Results.*** The article studies some aspects of investigation of crimes committed by transnational organised criminal groups. Based on the literature review, the tactical features of interrogation are formulated and characterised. The author emphasises that interrogation is an extremely complex investigative (search) action with regard to the tactics of its conduct. This is because the authorised person in most cases has considerably less information than the interrogated person. In addition, it should be noted that members of transnational organised criminal groups commit a variety of crimes, but they are mostly violent or related to the illegal trafficking of various objects (weapons, ammunition, chemicals, drugs). On the other hand, interrogation as a means of ensuring the criminal process will provide an opportunity to record the testimony of the interrogated person. It should also be noted that the investigative (search) action under study is the most informative and widespread in criminal proceedings. ***Conclusions.*** The investigative situations arising during its conduct are highlighted. The analysis of the questionnaire survey of law enforcement officers enables to identify the interrogation tactics which they consider to be the most optimal during the investigation of the category of unlawful acts under study, such as to: establish psychological contact; to give evidence in the form of a free narrative; ask different categories of questions; create an impression of the authorised person's awareness; apply different interrogation paces; use video recording; observe the person's non-verbal information; create or relieve tension; conceal the limits of the authorised person's awareness; present material evidence or materials of criminal proceedings.

Keywords: transnational organised criminal group, criminal offences, suspect, investigation, investigative (search) actions, investigation planning, interrogation, tactics.

1. Introduction

Interrogation is an extremely complex investigative (search) action with regard to the tactics of its conduct. This is because the authorised person in most cases has considerably less information than the interrogated person. In addition, it should be noted that members of transnational organised criminal groups commit a variety of crimes, but they are mostly violent or related to the illegal trafficking of various objects (weapons, ammunition, chemicals, drugs). On the other hand, interrogation as a means of ensuring the criminal process will provide an opportunity to record the testimony of the interrogated person. It should also be noted that the investigative (search) action under study is the most informative and widespread in criminal proceedings. Considering the above, it became necessary to study this issue.

The following national and foreign scholars who have focused their research on the development of certain tactical aspects of the interrogation should be noted: V.P. Bakhin, V.D. Bernaz, P.D. Bilenchuk, V.K. Veselskyi, A.F. Volobuiev, M.V. Danshin, M.M. Yefimov, V.S. Kuzmichov, V.H. Lukashevych, B.Ye. Lukianchykov, Ye.D. Lukianchykov, S.Yu. Petriaiev, S.M. Stakhivskyi, M.V. Saltevskyi, V.M. Tertyshnyk, K.O. Chaplynskyi, V.Y. Shepitko, M.O. Yankovyi et al. In addition, our study is based on a comprehensive approach to formu-

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lating the general principles of implementation of this procedural action, considering international practice and current trends.

The purpose of the article is to study the specific features of interrogation of suspects during investigation of crimes committed by transnational organised criminal groups.

2. General theoretical features of interrogation as an investigative (search) action

To begin with, S.V. Kobets argues that "...interrogation is one of the most effective and widespread investigative (search) actions, which is a source of formation of crucial evidence in criminal proceedings – testimony. Almost no criminal investigation is carried out without this investigative action. The necessity and importance of effective interrogation during the investigation of a threat or violence against a law enforcement officer is also quite obvious and is confirmed by both the results of the study of the practice of investigating this criminal offence and the research of other scholars. Moreover, interrogations within the investigated proceedings are characterised by certain specifics, primarily due to the fact that a law enforcement officer acts as a participant in a criminal event, which in turn affects the tactical features of this investigative action" (Kobets, 2022). According to K.O. Chaplynskyi, interrogation tactics means "...a set of forensic recommendations based on procedural provisions that determine the most appropriate methods and techniques for establishing psychological contact with the interrogated person, assisting him/her in recreating the event, methods and techniques of lawful psychological influence to obtain truthful testimony relevant to the detection and investigation of crimes" (Chaplynskyi, 2009). It is evident that forensic scientists have clearly indicated the conditions for the use of tactics: necessity, promptness and legality.

In other words, tactics are used during interrogation to investigate various circumstances of an unlawful act. Such tactics may be required, among other things, due to conflict situations that may arise during the performance of the said procedural action. In most cases, they arise during the interrogation of a suspect.

Furthermore, A. Ploskonos notes that the analysis of investigative and judicial practice reveals the following tactics of interrogation of members of organised criminal groups and criminal organisations. The author explains their significance by the rather frequent occurrence of facts of counteraction to the investigation. The most typical signs of countering the investigation, which occur during interrogation, are as follows: "...the refusal of an OCG member to testify with reference to Article 63 of the Constitution of Ukraine and the argumentation that 'a person is not responsible for refusing to testify or explain himself, family members or close relatives, whose circle is determined by law' (Constitution of Ukraine, 1996); refusal to testify during the pre-trial investigation, explaining their decision by 'fictitious' distrust in the officer of the investigative unit conducting the investigation or the operative providing operational support to the criminal proceedings, and their subsequent intention to testify only during the trial; fear of OCG members, who were at the lowest level in the hierarchy of the group, to testify, explaining such a decision by the possibility of real revenge from the leaders of the criminal organisation; the existence of a 'conditionally legal' exchange of information between members of the group who are in custody with accomplices who have not been identified in the course of the investigation or whose involvement in the commission of a criminal offence has not been proven; the existence of coercion of witnesses (victims) to refuse to testify about criminal activity, to conceal or distort certain facts, through bribery or intimidation" (Ploskonos, 2020).

In addition, according to part 4 of Art. 224 of the CPC of Ukraine "... a person has the right not to answer questions about those circumstances, the provision of which is expressly prohibited by law (confession, medical confidentiality, professional secrecy of a defence counsel, secrecy of a meeting room, etc.) or which may give rise to suspicion, accusation of committing a criminal offence by him/her, close relatives or family members, as well as about officials performing covert investigative (search) actions and persons who confidentially cooperate with pre-trial investigation authorities" (Criminal Procedural Code of Ukraine, 2012).

Therefore, we have identified the investigative situations that arise during the interrogation of suspects in this category of unlawful acts, such as:

– The suspect voluntarily provides information about the circumstances of the offence, no conflict situation exists (15 %);

– The suspect voluntarily does not fully provide information about the circumstances of the offence (19 per cent) due to fear of retaliation from other members of the organised criminal group (37 per cent), dependence on the leader of the organised criminal group (29 per cent), interest in the outcome of the criminal proceedings (25 per cent), or other circumstances (9 %);

– The suspect is unwilling to provide truthful and complete information – the presence of a conflict situation (29%);

– The suspect completely refuses to communicate with authorised persons (18 %).

3. Tactics of interrogation

With regard to the identification of specific tactics used to resolve the above conflict situations of interrogation, V.O. Konovalova and V.Yu. Shepitko argue that the most optimal for establishing false testimony during interrogations of different categories of persons are the following: to establish psychological contact; to ask questions (additional, detailed, clarifying); to present material evidence and demonstrate various case materials (in particular, the protocol of the scene inspection, protocols of interrogations of other persons, expert opinions, protocol of the investigative experiment) (Konovalova, Shepitko, 2008).

According to V.K. Veselskyi, "...the working stage of interrogation consists of four stages: establishment of psychological contact; free narration; asking questions; familiarisation of the interrogated person with the protocol and recording of testimony" (Piaskovskyi, 2020).

K.O. Chaplynskyi expediently adds the following tactics to the above listed tactics: to present testimony in the form of a free narrative; to create an idea of the investigator's awareness; to use different interrogation pace (forced, slow or mixed) (Chaplynskyi, 2008).

According to Ye.V. Priakhin, "...at the working stage of interrogation, the most effective tactics are used to obtain full and objective (truthful) testimony. Common tactics used during interrogation are: to establish communication contact; to present testimony in the form of a 'free story'; to ask questions; to present evidence; to bring to light what has been forgotten in the memory of the interrogated person" (Priakhin, 2016).

The analysis of the questionnaire survey of law enforcement officers allowed us to identify the interrogation tactics that they consider to be the most optimal when investigating the category of unlawful acts under study, such as to:

– Establish communication contact – 100 %;

– Present testimony in the form of a free narrative – 100 %;

– Ask questions of different categories – 100 %;

– Create an idea of the awareness of an authorised person– 29 %;

– Use different interrogation paces – 45%;

– Use video recording – 67 %;

– Observe a person's non-verbal information – 71 per cent;

– Create or relieve tension – 28 %;

– Conceal the limits of the authorised person's knowledge – 31 %;

– Present material evidence or materials of criminal proceedings – 54 %.

We will study some of them. For example, the establishment of psychological contact has been described by a group of scholars (B.Ye. Lukianchykov, Ye.D. Lukianchykov, S.Yu. Petriaiev) as "...the most favourable psychological "atmosphere" of interrogation, which helps interaction and relationships between its participants, it is a certain "mood" for communication. It is always bilateral, and its establishment and maintenance depend on both the investigator and the interrogated, although the initiative should belong to the investigator. There is a two-way contact in which the interrogated person feels that he or she is of some interest to the investigator. To establish psychological contact, the investigator must have knowledge of the psychology of the interrogated person. He or she must be aware of the individual psychological characteristics, typological qualities, mental state at the time of interrogation, life experience, etc." (Lukianchykov, Lukianchykov, Petriaiev, 2017).

We also consider relevant the position of a group of criminalists (V.O. Konovalova and V.Yu. Shepitko) who argue that "...psychological contact is the most favourable psychological atmosphere of interrogation, which positively affects the interaction and relations between participants, a certain attitude to communication. Psychological contact during interrogation involves two possible levels of contact: 1) when the interrogated person wishes to testify; 2) when the interrogated person is forced to do so. Such contact may increase or decrease, and may suddenly appear and disappear. Psychological contact is always bilateral, and its establishment and maintenance depend on both the investigator (judge) and the interrogated person, although the initiative should come from the investigator. There is a two-way contact in which the interrogated person feels that he or she is of some interest to the investigator. To establish psychological contact, the investigator must have knowledge of the psychology of the interrogated person. He or she must take into account the individual psychological characteristics, typological qualities, mental state at the time of interrogation, life experience, etc." (Konovalova, Shepitko, 2008).

According to S. Safronov, "...during interrogation, the flow of information can be divided into verbal (evidence communicated through speech) and non-verbal (evidence perceived and transmitted through non-verbal means, such as body movements, facial expressions, gestures, etc.)" (Safronov, 2001). With regard to non-verbal communication, it should be noted that it increases the amount of information received during communication. However, it cannot be accepted in court as real evidence.

According to V.K. Veselskyi, the authorised person "...offers the interrogated person to tell everything known about the criminal offence. A free narrative implies that the person presents the facts known to him/her in the sequence recommended by the investigator or chosen by him/her. This stage of interrogation is necessary for the following reasons: the investigator does not always have an idea of what data and to what extent the interrogated person has. During a free narrative, he or she can provide important information, the nature and existence of which the investigator did not even anticipate; the presentation of certain information by the interrogated person in a convenient sequence facilitates their recall, contributes to a more complete reproduction; a free narrative helps the investigator form a more complete and correct picture of the interrogated person's relationship with other persons in criminal proceedings, the line of conduct chosen by him or her, and the degree of his or her actual awareness" (Piaskovskyi, 2020).

Furthermore, P.Ya. Minka and K.O. Chaplynskyi emphasise that after establishing psychological contact, members of criminal groups begin to give testimony in the form of a free narrative. According to the authors, this tactic is based on the fact that in cases where members of criminal groups do not evade testimony and do not oppose the investigation, they are asked to provide all known information about the criminal activities of the group. According to the researchers, "... the use of this technique allows the investigator to study the identity of the offender, to identify the degree of his awareness of the circumstances of the case and to obtain information about facts that were unknown to the investigator. In cases where members of criminal groups give false testimony, go beyond the scope of the question or try to confuse the investigation, it is advisable to narrow the subject of the free narrative and offer to talk about other circumstances that are already known to the investigator or verified operationally during the investigation. This tactic is called splitting the subject of the free statement" (Minka, Chaplynskyi, 2007).

4. Conclusions

To sum up, interrogation of suspects is a mandatory investigative (search) action in the investigation of crimes committed by transnational organised criminal groups. The investigative situations arising during its conduct are highlighted. The analysis of the questionnaire survey of law enforcement officers enables to identify the interrogation tactics which they consider to be the most optimal during the investigation of the category of unlawful acts under study, such as to: establish psychological contact; give evidence in the form of a free narrative; ask different categories of questions; create an impression of the authorised person's awareness; apply different interrogation paces; use video recording; observe the person's non-verbal information; create or relieve tension; conceal the limits of the authorised person's awareness; present material evidence or materials of criminal proceedings.

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ОСОБЛИВОСТІ ПРОВЕДЕННЯ ДОПИТУ ПІДОЗРЮВАНИХ ПІД ЧАС РОЗСЛІДУВАННЯ ЗЛОЧИНІВ, УЧИНЕНИХ ТРАНСНАЦІОНАЛЬНИМИ ОРГАНІЗОВАНИМИ ЗЛОЧИННИМИ УГРУПОВАННЯМИ

Анотація. ***Метою*** статті є дослідження особливостей проведення допиту підозрюваних під час розслідування злочинів, вчинених транснаціональними організованими злочинними угрупованнями. ***Результати.*** Наукова стаття присвячена дослідженню деяких аспектів розслідування злочинів, вчинюваних транснаціональними організованими злочинними угрупованнями. На основі опрацювання наукової літератури сформульовані та охарактеризовані тактичні особливості проведення допиту. Автор акцентує увагу на тому, що допит є надзвичайно складною слідчою (розшуковою) дією з огляду на тактику його проведення. Це пояснюється тим, що уповноважена особа у більшості випадків має набагато менший об'єм відомостей на відміну від допитуваного. Крім того, слід вказати, що учасники транснаціональних організованих злочинних угруповань вчинюють різноманітні злочини, але переважено вони мають насильницький характер чи пов'язані з незаконним обігом різноманітних об'єктів (зброї, боєприпасів, хімічних речовин, наркотичних засобів). В свою чергу, допит як засіб забезпечення кримінального процесу надасть можливість зафіксувати показання допитуваної особи. Також необхідно відмітити, що досліджувана слідча (розшукова) дія є найбільш інформативною і поширеною в кримінальному судочинстві. ***Висновки.*** Виокремлено слідчі ситуації, які виникають під час його проведення. Аналіз анкетування працівників правоохоронних органів дозволив встановити тактичні прийоми допиту, які вони вважають найбільш оптимальними під час розслідування досліджуваної категорії протиправних діянь, як-от: встановлення психологічного контакту; надання свідчень у формі вільної розповіді; постановка різних категорій запитань; створення уявлення про належну поінформованість уповноваженої особи; застосовування різних темпів допиту; використання відеозапису; спостереження за невербальною інформацією особи; створення або припинення напруги; приховування меж поінформованості уповноваженої особи; пред'явлення речових доказів або матеріалів кримінального провадження.

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

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CRIMINAL LAW MEASURES TO COMBAT COLLABORATION DURING THE ARMED CONFLICT

Abstract. ***Purpose.*** The purpose of the article is to analyse thoroughly the criminal law measures to counteract collaboration activities in the context of armed conflict. A special focus is made on the development of an effective regulatory mechanism for this issue, given the urgency of protecting Ukraine's national security. The study is aimed at systematising existing legal approaches and identifying optimal solutions for improving Ukrainian legislation. ***Results.*** The article examines the phenomenon of collaboration as a multifaceted socio-political phenomenon that has become particularly relevant in the context of the armed conflict in Ukraine after the full-scale invasion of Russia in 2022. The nature, motives and consequences of collaboration are analysed, and its impact on national security, sovereignty and territorial integrity of the state is determined. An emphasis is placed on the criminal law regulatory framework for this phenomenon, in particular, the introduction of Article 111-1 'Collaboration Activities' to the Criminal Code of Ukraine, and the main challenges in its practical application are considered. The text emphasises the need to develop a comprehensive strategy to combat collaborationism, combining legal, social, educational and technological measures. The importance of preventing criminal offences through legal education, social programmes for vulnerable groups, and the integration of law enforcement and social services is underlined. The potential of using modern technologies for threat monitoring, digital control and improving the effectiveness of law enforcement is considered. The role of international cooperation in counteracting this phenomenon, including the exchange of experience and implementation of best international practices, is analysed separately. ***Conclusions.*** The recommendations for improvement of the current legislation and law enforcement mechanisms with a view to increasing the effectiveness of combating collaboration both during the war and in the post-war period are proposed. The key areas of prevention of criminal offences are identified, including information security, prevention of propaganda, legal education and social reintegration of persons prone to offences.

Key words: collaborationism, collaboration, national security, armed conflict, criminal law regulatory framework, crime prevention, social programmes, legal education, information security, international cooperation, Ukrainian legislation, Article 111-1 of the Criminal Code of Ukraine, hybrid warfare.

1. Introduction

After the full-scale invasion of Ukraine by the Russian Federation, it has become necessary not only to properly investigate military criminal offences, where investigative practice is not yet sufficiently developed, but also to deeply understand the phenomenon of voluntary cooperation between citizens and representatives of the occupying country. As a result, this cooperation, which benefits the aggressor and harms the homeland, is a complex socio-political phenomenon that requires detailed study. The study of collaborationism is relevant for any state whose territory has been or remains occupied, as such countries face the task of not only identifying cases of collaboration with the occupier, but also providing support to their population. It is important to understand the nature, causes, motives and consequences of collaboration in order to ensure fair punishment of those who collaborate with the enemy both during and after the war.

Modern science interprets collaborationism as a complex psychosocial phenomenon that manifests itself in voluntary cooperation, especially if it is ideologically motivated, with the enemy in various spheres of public life. The result of such activities is a threat to national security, encroachment on the sovereignty, territorial integrity, constitutional order and other interests of the state. In the context of the ongoing war and the occupation of certain territories

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of Ukraine, many citizens remain in a difficult situation. Some of them were forced to flee their homes, but a significant number of Ukrainians remain in the occupied territories, often becoming hostages of the situation. Unfortunately, among them are those who, from the first days of the occupation, sided with the enemy and took the position of a collaborator.

Collaborationism is studied as a multifaceted socio-political phenomenon that arises as a result of interaction between the occupiers and the local population. It can be seen as a form of cooperation that can be both voluntary and forced. This cooperation covers various sectors: political, military, economic, domestic, socio-cultural, etc. An important aspect of the study is to find out the motives behind such actions and to develop measures to combat this phenomenon.

In Ukraine, the issue of collaboration has gained particular importance due to the continuation of Russian aggression and the temporary occupation of part of the sovereign territory. The outbreak of war has a hybrid character, which adds to the complexity of identifying and qualifying cases of collaboration. Therefore, the study of this phenomenon in the current Ukrainian realities is not only important, but also necessary both from a theoretical point of view and for practical application. Specifically, this applies to measures to counteract collaborationism during active armed conflict, as well as in the post-war period.

The purpose of the article is to analyse thoroughly the criminal law measures to counteract collaboration activities in the context of armed conflict. A special focus is made on the development of an effective regulatory mechanism for this issue, given the urgency of protecting Ukraine's national security. The study is aimed at systematising existing legal approaches and identifying optimal solutions for improving Ukrainian legislation.

A number of scholars have studied the individual components of the phenomenon of collaboration. Among the most well-known names are the following: M. Akimov, V. Berezniak, I. Berdnik, M. Bondarenko, L. Brych, S. Vorobei, V. Hatseliuk, M. Holovko, O. Holovkin, N. Hunko, O. Illarionov, O. Kravchuk, V. Kubalskyi, V. Kubalskyi, V. Kuznetsov, S. Lykhova, O. Matiushenko, V. Navrotskyi, A. Politova, M. Rubashchenko, M. Syiploki, N. Stefaniv, V. Shablystyi, S. Shevchenko, O. Yunin and others. Their research was based on the identification of certain criminal law aspects of collaboration, especially in the context of armed conflict. However, the issue of defining a comprehensive strategy aimed at developing effective strategies to combat collaborationism and improving the current legislation remains open.

2. Collaborative activities during the armed conflict

With the outbreak of the hybrid war in 2014, and later the full-scale invasion of Ukraine by the russian federation in 2022, the issue of collaboration in the occupied territories of our country arose. That is why, in March 2022, the Law of Ukraine 2108-IX of March 03, 2022 "On Amendments to Certain Legislative Acts of Ukraine Regarding the Establishment of Criminal Liability for Collaborative Activities" came into force (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine Regarding the Establishment of Criminal Liability for Collaborative Activities, 2022), which established criminal liability for collaboration. In accordance with this law, Article 111-1 'Collaboration Activities' was added to the Criminal Code of Ukraine (hereinafter - the CCU) (**Criminal Code of Ukraine, 2001**).

Therefore, when studying this phenomenon, the etymology of the words 'collaboration' and 'collaborationism' cannot be ignored. Collaborationism in international law, according to Yevhen Pysmenskyi, means cooperation with the enemy, especially in the occupied territory. Any form of such cooperation is regarded as treason against the state (Pysmenskyi, 2020). The researcher points to the possibility of a legal conflict if the concepts of 'treason' and 'cooperation with the occupier' are distinguished. On the other hand, O. Holovkin and I. Skazko consider collaborationism as intentional actions aimed at harming the sovereignty or security of Ukraine. These actions may include participation in illegal organisations in the occupied territories or performing administrative functions under the control of the aggressor (Holovkin, Skazko, 2017). In addition, the concept of "collaboration" has a broader meaning than the traditional historical interpretation of the term "collaborationism," as it covers various forms of criminal cooperation. Current Ukrainian legislation considers collaboration as a serious offence, which includes both active support of the occupying power and forced participation due to personal interests or threats. In terms of terminology, it is important to consider the complexity and context of such actions, which leads to the use of the broader concept of "collaboration" in Ukrainian criminal law. In the current context of the war with Russia, collaborationism manifests itself in various forms, including participation in illegal referendums, propaganda campaigns, transfer of resources to the enemy or holding positions in occupation authorities. Therefore, the legal definition of this phenomenon should be as clear and flexible as possible to cover all manifestations of criminal activities in the context of armed conflict. As

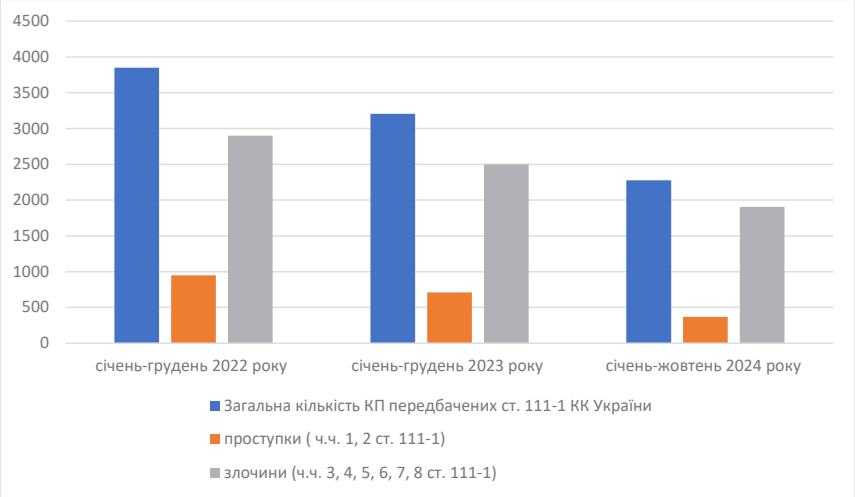

Fig. 1 Number of recorded criminal offences in the reporting period under Article 111-1 of the CC of Ukraine

January-December 2022 January-December 2023 January-October 2024

- **Totality of criminal offences under Article 111-1 of the CC of Ukraine**
- **Misdemeanours (parts 1, 2 of Art. 111-1)**
- **Offences (parts 3, 4, 5, 6 of Art. 111-1)**

a result, after the enactment of this article, criminal proceedings on the facts of committing such a criminal offence were registered in the first days. This is confirmed by the statistics on registered criminal offences and the results of their pre-trial investigation, which is available on the official website of the Prosecutor General, in relation to the registered criminal proceedings on the fact of collaboration.

The statistics reveal a decrease in the number of recorded criminal offences under Art. 111-1 of the CC of Ukraine over the past 3 years, which is not a positive indicator, since due to a number of factors, the criminal offence under study acquires signs of latency. In addition, the decrease in the number of registered criminal offences under Art. 111-1 of the Criminal Code of Ukraine ("Collaboration") may be due to several main factors:

1. Difficulty in distinguishing between the elements of a criminal offence and the need to accurately qualify the actions of suspects. Art. 111-1 of the CCU has many parts covering different forms of collaboration, which require detailed proof of all elements of a criminal offence.

2. Proceedings in absentia (in the absence of the accused) sometimes lead to insufficient protection of the defence's rights, which may affect the number of completed cases. There are difficulties with the evidence base, especially when the accused is outside Ukraine.

3. Frequently, the actions of suspects may fall under other articles of the CCU (e.g., Article 111 of the CCU "Treason"), which creates competition between the provisions and reduces the number of recorded criminal offences under Article 111-1 of the CCU.

4. Sometimes, actions that initially appear to be collaborative activities may, after further investigation, be classified as other offences or not constitute a criminal offence at all. There may also be political pressure to 'demonstrate' the performance of law enforcement bodies, which affects the recording of cases.

5. The ambiguity of the definition of "temporarily occupied territories" and their status at different times also affects the statistics of offences due to the physical impossibility of conducting pre-trial investigations in such territories.

Therefore, the decrease in the number of recorded criminal offences is related not only to the decrease in the number of cases of collaboration, but also to legal, procedural and social factors.

3. Prevention and prophylaxis of criminal offences related to collaboration

The current situation demonstrates that collaboration can take a variety of forms, while acquiring new features. The most common ones include participation in hostilities on the side of the aggressor state, public calls for support of the aggressor, propaganda of the occupation authorities, organisation and holding of illegal referendums, work in occupation administrations, transfer of mate-

rial or non-material resources to the occupation forces, cooperation with the military or intelligence agencies of the aggressor, creation or support of illegal armed groups, economic cooperation with the occupiers, providing information to the enemy, holding senior positions in enterprises or structures under the control of the aggressor, participation in information campaigns in favour of the occupation authorities, propaganda of the aggressor's ideas in the media or educational institutions, persecution of the pro-Ukrainian population, organisation of anti-Ukrainian rallies, administrative activities in favour of the occupation authorities, violation of the rights of citizens under the control of the aggressor. Given this diversity of manifestations of collaborative activities, the issue of prevention and prophylaxis of criminal offences comes to the fore (Yunin, Berezniak, Shablystyi, Makashov, 2024).

Both the prevention and prophylaxis of criminal offences are aimed at reducing crime, protecting public safety and creating conditions for the stable development of society in both peacetime and wartime. In peacetime, preventive measures are focused on socio-economic aspects: employment, educational programmes, and support for socially vulnerable groups. Legal education of citizens plays a special role, raising their awareness of the legal consequences of criminal offences and ways to protect their rights.

Under martial law, the emphasis shifts to protecting national security, combating crimes against the foundations of national security, criminal offences against peace, human security and international law and order, military criminal offences, etc. In such circumstances, special attention is paid to information security and the prevention of propaganda that promotes hostile actions. Legislation is being tightened and control over compliance with the law is becoming stricter, including the introduction of military tribunals and operational measures.

Conflict prevention also includes work with the population in the temporarily occupied territories, where it is important to distinguish between forced cooperation and deliberate collaboration. All measures are aimed at creating conditions in which criminal activities become risky and potential offenders understand the inevitability of punishment. In general, comprehensive prevention combines legal, social and moral and ethical approaches, ensuring stability and protecting the foundations of statehood.

It is believed that the prevention of criminal offences is a set of measures aimed at creating conditions that minimise the risks of criminal behaviour and ensure compliance with legal and social norms. The main goal of prevention is to create a stable legal consciousness among citizens that meets the requirements of the current legislation. This activity involves not only combating criminal offences that have already been committed, but also preventing potential threats by creating conditions under which criminal activity becomes unprofitable and dangerous. In peacetime, prevention focuses on social programmes that promote the integration of vulnerable groups into society, improve education, employment and social justice. Of particular importance is legal education, allowing citizens to understand the consequences of illegal actions (Shablystyi, Berezniak, Katorkin, 2024).

The key functions of prevention are protective, educational, ideological and prognostic. The protective function ensures the protection of public interests and social values from unlawful encroachments. It involves the work of law enforcement bodies and other state institutions that oversee compliance with the law and respond promptly to potential threats. The educational function focuses on building respect for the law among citizens through educational programmes and social campaigns. The main emphasis is on persuasion rather than coercion, which helps to prevent criminal behaviour by fostering a law-abiding consciousness.

The ideological function is to formulate the general ideological orientation of preventive measures, ensure support for national interests and counteract anti-state propaganda. It is especially important in times of martial law, when there is a growing need to strengthen national unity and counteract collaborationism. Unfortunately, in the face of current challenges, the issue of ideology is often underestimated, which requires increased attention from the state and society (Katorkin, 2024).

The predictive function helps identify potential threats and develop strategies to prevent them. It provides law enforcement bodies with the necessary information to predict and localise risks. This function is especially relevant in wartime, when it is necessary to identify threats to state security in a timely manner and respond to them promptly.

General prevention focuses on addressing the systemic causes of crime, such as social injustice, corruption or insufficient legal culture. It reaches a wide audience and aims to create a safe environment. Individual prevention, on the other hand, focuses on specific individuals whose behaviour raises suspicions of possible illegal acts. This work includes conversations, supervision and psychological support, which helps prevent the commission of criminal offences even at the stage of identifying intent.

Law enforcement bodies, government agencies, educational institutions, NGOs and the media play an important role in preven-

tive activities. The joint efforts of these institutions ensure a comprehensive approach to crime prevention, creating an environment for a safe and stable society in both peacetime and wartime. Work with youth is particularly emphasised, as they are the most vulnerable to negative influence and manipulation by the enemy (Katorkin, 2024). Therefore, criminal law measures to combat collaboration during armed conflict play an important role in the prophylaxis and prevention of this type of criminal offence. Such measures include the following:

1. Creation of a single platform for the prevention of criminal offences:

1.1. Early warning system: use of artificial intelligence to analyse data and identify potential threats.

1.2. Electronic databases: joint access of law enforcement bodies to a single database of persons prone to commit criminal offences.

1.3 Digital risk monitoring: surveillance of social media to detect propaganda of criminal acts (especially in the field of cybersecurity).

1.4. Educational applications and platforms: interactive programmes to teach young people about legal culture. Introduce mandatory courses on media literacy and countering disinformation.

2. Integration of social services and law enforcement bodies:

2.1. Community-based social and legal centres: creation of local support centres for most-at-risk groups (juveniles released from prison, people in difficult life circumstances).

2.2. Expansion of the Community Policing programme: active interaction of the police with communities, for example, mentoring programmes for young people with the participation of law enforcement officers.

3. Prevention through education and media:

3.1. Early legal education: mandatory introduction of legal studies in schools from an early age. Introduction of interactive teaching methods for better understanding of the law.

3.2. Information campaigns: regular media awareness campaigns on the consequences of criminal offences. Launch national programmes to combat stereotypes that may contribute to crime (e.g. gender-based violence).

4. Economic and social measures:

4.1 Support for socially vulnerable groups: creation of vocational training programmes for people at high risk of committing offences.

4.2. Mechanisms of resocialisation: introduction of a system of social contracts for people serving suspended sentences. Development of community service programmes as an alternative to imprisonment.

5. International cooperation:

5.1. Exchange of experience and technologies: implementation of international practices of crime prevention (e.g. Scandinavian model of social rehabilitation).

5.2. Control of cross-border crime: joint activities with foreign partners to combat organised crime and cyber threats.

6. Use of innovative technologies:

6.1. Video surveillance systems with analytics: installation of modern cameras in places with high crime rates.

6.2. Electronic supervision of probationers: introduction of bracelets to monitor the whereabouts of persons on probation.

4. Conclusions

In the current context of the armed conflict between Ukraine and russia, collaboration is a complex socio-political phenomenon that requires detailed research and effective counteraction. The introduction of criminal law measures, such as Article 111-1 of the Criminal Code of Ukraine, has become an important step in ensuring national security, but at the same time, challenges arise in their effective implementation and application in practice.

A comprehensive approach, including legal, social, educational and technological measures, is needed to successfully combat collaboration. It is important to create mechanisms for the early detection of potential threats and ensure effective crime prevention through social programmes, legal education and media literacy. Cooperation between law enforcement bodies, social services and international partners, as well as the use of modern technologies for data monitoring and analysis, is of particular importance.

An important task remains to develop a clear strategy that will consider various forms of collaboration and ensure fair punishment of perpetrators. Prevention should be aimed at creating an environment in which illegal activities become risky and unprofitable, and society gains a strong immunity to external threats. Only comprehensive and coordinated action by all stakeholders will ensure the stability and protection of Ukraine's statehood both during the war and post-war periods.

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КРИМІНАЛЬНО-ПРАВОВІ ЗАХОДИ БОРОТЬБИ З КОЛАБОРАЦІЙНОЮ ДІЯЛЬНІСТЮ У ПЕРІОД ЗБРОЙНОГО КОНФЛІКТУ

Анотація. ***Метою*** статті є глибокий аналіз кримінально-правових заходів протидії колабораційній діяльності в умовах збройного конфлікту. Особлива увага приділяється розробці ефективного механізму законодавчого регулювання цієї проблеми, враховуючи актуальність захисту національної безпеки України. Дослідження спрямовано на систематизацію існуючих правових підходів і визначення оптимальних рішень для удосконалення українського законодавства. ***Результати.*** У статті досліджується феномен колабораційної діяльності як багатогранне соціально-політичне явище, що набуло особливої актуальності в умовах збройного конфлікту на території України після повномасштабного вторгнення рф у 2022 році. Проаналізовано природу, мотиви та наслідки колабораційної діяльності, визначено її вплив на національну безпеку, суверенітет і територіальну цілісність держави. Особлива увага приділена кримінально-правовому регулюванню цього явища, зокрема запровадженню ст. 111-1 «Колабораційна діяльність» до КК України, та розглянуто основні виклики у його практичному застосуванні. У тексті підкреслюється необхідність розробки комплексної стратегії протидії колабораціонізму, що поєднує правові, соціальні, освітні та технологічні заходи. Акцентується увага на важливості профілактики кримінальних правопорушень через правову освіту, соціальні програми для вразливих груп населення, інтеграцію роботи правоохоронних органів та соціальних служб. Розглянуто потенціал використання сучасних технологій для моніторингу загроз, цифрового контролю та підвищення ефективності правоохоронної діяльності. Окремо проаналізовано роль міжнародної співпраці у протидії такому явищу, зокрема обмін досвідом та впровадження найкращих світових практик. ***Висновки.*** Запропоновано рекомендації щодо вдосконалення чинного законодавства та механізмів правозастосування з метою підвищення ефективності боротьби з колабораційною діяльністю як під час війни, так і в післявоєнний період. Визначено ключові напрями профілактики кримінальних правопорушень, серед яких інформаційна безпека, запобігання пропаганді, правова просвіта та соціальна реінтеграція осіб, схильних до правопорушень.

Ключові слова: колабораціонізм, колабораційна діяльність, національна безпека, збройний конфлікт, кримінально-правове регулювання, профілактика злочинності, соціальні програми, правова освіта, інформаційна безпека, міжнародна співпраця, законодавство України, ст. 111-1 КК України, гібридна війна.

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THE PUBLIC-LAW STATUS OF NOTARIAL PROFESSIONAL SELF-GOVERNANCE BODIES

Abstract. ***Purpose.*** The purpose of this article is to characterize the public-law status of notarial professional self-governance bodies. ***Results.*** One of the most significant aspects of the legal nature of notarial professional self-governance is the existence of specialized bodies that unite these authorized individuals and exercise delegated powers. These bodies serve as the driving force and organizational actors through which the goals and objectives of self-organization, self-governance, and self-regulation of representatives of this institution are implemented. Currently, in accordance with the applicable legislation, these bodies are represented by the Notarial Chamber of Ukraine and its subordinate institutions, which possess a special public-law status. A classification of the entities within the Notarial Chamber of Ukraine is presented.These are proposed to be divided into the following groups: (1) entities responsible for ensuring the functioning and implementation of the core self-governance powers, including the Congress of Notaries of Ukraine, the Council of the Notarial Chamber of Ukraine, the President, the First Vice-President and Vice-President of the Notarial Chamber of Ukraine, the Audit Commission, and the Commission on Professional Ethics of Notaries; and (2) auxiliary collegial and advisory bodies whose activities are aimed at deeper and higher-quality implementation of specific functions related to notarial self-governance and the protection of professional interests and rights of notaries, as well as the Regional Branches of the Notarial Chamber of Ukraine, which exercise delegated powers within specific territories. ***Conclusions.*** It is concluded that, under current Ukrainian legislation, notarial professional self-governance bodies are represented by the Notarial Chamber of Ukraine and its subordinate entities. The Notarial Chamber of Ukraine is a key non-governmental body with broad delegated powers in the administration of the notarial profession and the regulation of the activities of its members. It operates independently from state authorities and unites all notaries without exception. Its structure includes specialized bodies: the Congress of Notaries of Ukraine, the Council of the Notarial Chamber of Ukraine, the President, the First Vice-President and Vice-President of the Notarial Chamber of Ukraine, the Audit Commission, and the Commission on Professional Ethics of Notaries. These bodies ensure the functioning and execution of the core powers of the Notarial Chamber of Ukraine and address the most significant matters of notarial professional activity. In addition to the aforementioned bodies, the system of the Notarial Chamber of Ukraine also includes auxiliary collegial and advisory bodies. Their purpose is to ensure a more thorough and effective implementation of certain functions related to notarial self-governance and the protection of notaries' professional interests and rights. At the local level, the representation of notaries is carried out by the Regional Branches of the Notarial Chamber of Ukraine, which perform the powers assigned to them within designated territorial jurisdictions.

Key words: notariat, professional self-governance, Notarial Chamber of Ukraine, commissions of the Notarial Chamber of Ukraine, congresses.

1. Introduction

One of the most important aspects of the legal nature of professional self-governance in the notarial profession is the existence of specialized bodies that unite authorized individuals and exercise delegated powers. These bodies serve as the driving force and institutional composition through which the objectives and functions of self-organization, self-management, and self-regulation are implemented by representatives of this institution. According to current legislation, such bodies are represented by the Notarial Chamber of Ukraine and its subordinate institutions, which possess a distinct public-legal status.

In contemporary legal scholarship, various problematic aspects of notarial practice have repeatedly become the subject of research. In particular, these issues have been examined by scholars such as V.V. Barankova, S.S. Bychkova,

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M.S. Dolynska, V.V. Komarov, V.K. Matviichuk, S.Ya. Fursa, A.H. Chubenko, among many others. However, despite the relevance of issues concerning notarial operations, the institutional composition of professional self-governance in this field has not yet received adequate doctrinal coverage.

Therefore, the aim of this article is to characterize the public-legal status of the bodies of notarial professional self-governance.

2. The Public-Legal Status of Notarial Professional Self-Governance Bodies

The word *status* originates from Latin and is defined as the position or condition of something or someone. A synonym of this term is *position*, since regardless of the field in which it is applied, the two are equal in meaning and differ only in morphological origin (Lytvynchuk, 2007). The public-legal status is a branch of the general legal status that develops and operates within the field of administrative law. Its subject matter encompasses legal relationships that arise in connection with the functioning of state and local self-government bodies.

Based on the analysis of various scholarly concepts and interpretations, V.A. Hvozdii identified three main approaches to defining the administrative-legal (public-legal) status. In the narrow sense, it is understood as a set of rights, duties, and responsibilities of the subjects of administrative-legal relations. In the broad sense, the structure of administrative-legal status includes the purpose, mission (or overarching objective of a certain entity's existence), tasks and functions of the subject of administrative-legal relations, guarantees of its activities, and the scope of its competence, as well as the aforementioned rights, duties, and legal responsibility. A third approach, which is intermediate between the previous two, defines administrative-legal status as a legislatively established position of an administrative law subject in society, which enables it to carry out certain activities and bear legally prescribed responsibility for compliance with legal norms in cases where such activities extend beyond those norms. Under this third approach, the structure of administrative-legal status includes the rights, duties, responsibilities, and activity guarantees of the subjects of administrative-legal relations (Hvozdii, 2020).

The administrative-legal status is characterized differently depending on the specific area of administrative-legal regulation. For example, H.O. Balyk, in examining the administrative-legal status of the Pension Fund of Ukraine, defined it as the legal position of the Pension Fund derived from its competence, tasks, functions, organizational structure, procedures of operation, accountability, and its interactions with other entities involved in implementing state policy in the field of pension provision and compulsory state social insurance (Balyka, 2015). O.V. Ivanov interpreted the public-legal status of the National Agency on Corruption Prevention as a functionally determined, normatively defined set of its legal rights, duties, and guarantees realized both within and beyond the scope of administrative legal relations, reflecting the real position and role of this central executive authority with special status in the system of entities involved in the formation and implementation of state anti-corruption policy, while also defining the specific nature of its activities (Ivanov, 2019).

In view of the above, the public-legal status of notarial professional self-governance bodies should be understood as the legislatively defined position of such bodies within the system of administrative legal relations arising in the state, as well as their competence and powers, which enable them to participate in such relations and fulfill their designated functions.

3. Functioning of Notaries' Professional Self-Governance Bodies

The bodies of professional self-governance of notaries are organized hierarchically, grouped within a system headed by the Notarial Chamber of Ukraine (NCU). According to national legislation, in particular the Law of Ukraine "On Notariate," professional self-governance of notaries is exercised through the Notarial Chamber of Ukraine and its bodies. The NCU is a non-profit legal entity that performs professional self-governance in the field of notarial activity and possesses its own official seal. Its activity is carried out in accordance with the law and its statute.

The powers of the NCU include: representing the interests of regional notarial chambers and notaries before governmental and other institutions; ensuring the protection of social and professional rights of notaries; participating in the expert evaluation of draft laws related to notarial activity; ensuring the professional development and training of notaries and their assistants; monitoring compliance with professional ethics rules, and other delegated functions.

Membership in the NCU is open to individuals who hold a certificate of the right to engage in notarial activity. The amount of membership fees and other mandatory payments required to perform the functions of the Chamber is determined by the Congress of Notaries. The NCU is registered in accordance with the Law of Ukraine "On State Registration of Legal Entities, Individual Entrepreneurs and Public Formations," taking into account the specifics provided by the Law of Ukraine on Notaries (1993).

Thus, the Notarial Chamber of Ukraine is a non-governmental self-governing body that unites all notaries without exception and exercises delegated powers related to the organization of their professional activities, as well as the protection and representation of their rights and interests. However, the NCU is not the only institution within this framework. According to the Chamber's Statute, the system of notaries' professional self-governance consists of the Notarial Chamber of Ukraine and its governing bodies, as well as its regional branches in the Autonomous Republic of Crimea, regions, and the cities of Kyiv and Sevastopol (hereinafter – NCU Branches), along with their respective bodies.

The governing bodies of the NCU, each with its own public-law status and functions, include: the Congress of Notaries of Ukraine; the NCU Council; the NCU President; the First Vice-President; the Vice-President; the Audit Commission; and the Commission on Professional Ethics of Notaries (Statute of the Notarial Chamber of Ukraine, 2018).

The Congress of Notaries of Ukraine is the supreme governing body of the NCU. It is convened by the NCU Council at least once every two years and is authorized to decide on any matter concerning the activities of the Chamber. Delegates to the Congress are elected at general meetings of the notaries from the NCU Branches among those practicing notaries operating in the respective region (Statute of the Notarial Chamber of Ukraine, 2018).

The NCU Council, in accordance with its Rules of Procedure approved by Decision No. 35 dated 15.02.2017, exercises professional self-governance functions between the Congress sessions. The Council comprises the NCU President, First Vice-President, Vice-President, the heads of NCU Branches, and two notaries elected by general meetings of those branches where the number of notaries exceeds one thousand. At its meetings, the Council:

1. facilitates the implementation of state guarantees for notarial activity, and protects the professional and social rights of notaries;

2. approves and, if necessary, amends the annual budget of revenues and expenditures of the NCU and its Branches;

3. decides on the amount of the monthly remuneration for the NCU President for fulfilling statutory duties under a civil contract if the position is held outside the Chamber's staff structure;

4. determines the salary and other payments to the NCU President if the duties are performed in an official staff capacity;

5. approves and ensures the implementation of key plans and activities, among other functions (Regulations of the Council of the Notarial Chamber of Ukraine, 2017).

According to the NCU Council Decision No. 35 dated 15.02.2017, the President of the Notarial Chamber of Ukraine serves as its official representative, symbol of unity, and head of the organization (Regulations on the President of the Notarial Chamber of Ukraine, 2017).

The **Commission on Professional Ethics of Notaries** of the Notarial Chamber of Ukraine (NCU) and the **Audit Commission** of the NCU are NCU bodies accountable and subordinated to the Congress of Notaries of Ukraine. In particular, the Commission on Professional Ethics of Notaries, within its scope of authority, monitors notaries' compliance with the Rules of Professional Ethics of Notaries of Ukraine and, upon detecting violations, takes appropriate measures to address them. It also considers complaints and other appeals from NCU members, the Ministry of Justice of Ukraine, chief territorial departments, individuals, and legal entities concerning breaches of ethical standards by notaries (Regulations on the Commission on Professional Ethics of Notaries of the Notarial Chamber of Ukraine, adopted by the NCU Council Decision No. 9 of 26.02.2014).

According to the NCU Council Decision No. 2 of 10.06.2013, which approved the Regulations on the Audit Commission of the Notarial Chamber of Ukraine, the Commission monitors compliance with the NCU Statute, decisions of the Congress of Notaries of Ukraine, and NCU Council resolutions. It also oversees the financial and economic activities of the NCU and its branches, monitors the payment of monthly fees by NCU members, and annually reviews the implementation of the NCU budget and that of its branches, as well as the budget for maintaining the NCU administrative apparatus. The Audit Commission consists of one representative from each NCU branch, elected at the general meeting of notaries of the respective branch for a two-year term (Regulations on the Audit Commission of the Notarial Chamber of Ukraine, 2013).

These NCU bodies are central within the system of professional self-governance. At the same time, several auxiliary collegial commissions should also be highlighted. While they form part of the notarial self-governance system, they are not direct governing bodies of the NCU and are accountable and subordinated to the NCU Council. These commissions are established to ensure deeper implementation of functions and tasks in the field of notarial self-governance, as well as compliance and oversight of NCU activities. They include, among others: the Legal Expert Commission, the NCU Commission on Analytical

and Methodological Support of Notarial Activities, and the NCU Commission on Cooperation with State and Local Government Bodies (Official website of the Notarial Chamber of Ukraine, 2024).

At the local level, professional self-governance of notaries is represented by **branches of the Notarial Chamber of Ukraine**. According to the **Standard Regulations on the Branch of the Notarial Chamber of Ukraine in the Autonomous Republic of Crimea, regions, and the cities of Kyiv and Sevastopol**, approved by the Regular Congress of Notaries of Ukraine (Protocol No. 5 of 20.04.2018), a branch of the NCU serves as the official representation of the Notarial Chamber of Ukraine in the Autonomous Republic of Crimea, regions, and the cities of Kyiv and Sevastopol. It ensures organizational unity among NCU members and notaries practicing in the corresponding territory. Each branch operates within its respective territorial jurisdiction for an indefinite period.

Information about each branch is included in the Unified State Register of Legal Entities, Individual Entrepreneurs, and Public Formations in accordance with applicable legislation. A branch is a separate structural unit of the NCU, does not possess legal entity status, and operates based on the Standard Regulations. The governing bodies of the branch are:

1. the General Meeting of Notaries of the Branch;
2. the Board of the Branch;
3. the Head of the Branch (or Deputy Head of the Branch) (Standard Regulations on the Branch of the Notarial Chamber of Ukraine in the Autonomous Republic of Crimea, regions, and the cities of Kyiv and Sevastopol, 2018).

4. Conclusions

The conducted analysis demonstrates that, in accordance with the current legislation of Ukraine, the bodies of professional self-governance of notaries are represented by the **Notarial Chamber of Ukraine (NCU)** and its subordinate entities. The NCU is a key non-governmental body endowed with broad delegated powers in managing the notarial profession and overseeing the activities of its members. This Chamber operates independently of state authorities and unites all notaries without exception.

Its structure comprises several specific governing bodies, including the **Congress of Notaries of Ukraine**, the **NCU Council**, the **President**, the **First Vice President**, and the **Vice President of the NCU**, as well as the **Audit Commission and** the **Commission on Professional Ethics of Notaries**. These bodies ensure the functioning of the Notarial Chamber of Ukraine and the implementation of its core responsibilities, as well as addressing the most significant issues concerning the professional activities of notaries.

In addition to the aforementioned bodies, the NCU system includes **auxiliary collegial and advisory bodies** aimed at more thoroughly and effectively performing certain functions to guarantee notarial self-governance and the protection of notaries' professional rights and interests.

At the local level, the representation of notaries is carried out by **NCU branches**, which exercise delegated powers within their respective territorial jurisdictions.

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ПУБЛІЧНО-ПРАВОВИЙ СТАТУС ОРГАНІВ ПРОФЕСІЙНОГО САМОВРЯДУВАННЯ НОТАРІУСІВ

Анотація. ***Мета*** статті полягає у тому, щоб охарактеризувати публічно-правовий статус органів професійного самоврядування нотаріусів. ***Результати.*** Одним із найважливіших аспектів правової природи професійного самоврядування нотаріусів є спеціальні органи, які об'єднують зазначених уповноважених осіб та виконують делеговані повноваження. Це рушійна сила, суб'єктний склад, в діях якого реалізуються мета і завдання самоорганізації, самоуправління та саморегулювання представників вказаного інституту. На сьогоднішній день відповідно до чинного законодавства дані органи представлено Нотаріальною палатою України та підпорядкованими їй установами, що мають особливий публічно-правовий статус. Здійснено класифікацію суб'єктів, що входять до Нотаріальної палати України, які запропоновано поділити на наступні групи: 1) суб'єкти забезпечення функціонування та реалізації основних повноважень самоврядування: З'їзд нотаріусів України, Рада Нотаріальної палати України, Президент, Перший віце-президент та Віце-президент Нотаріальної палати України, Ревізійна комісія, а також Комісія з питань професійної етики нотаріусів; 2) допоміжні колегіальні та дорадчі органи, діяльність яких спрямована на більш глибоку та якісну реалізацію окремих функцій із забезпечення нотаріального самоврядування та захист; професійних інтересів та прав нотаріусів; відділення Нотаріальної палати України, які виконують надані їм повноваження в межах окремих територій. ***Висновки.*** Зроблено висновок, що органи професійного самоврядування нотаріусів, згідно до чинного законодавства України, представлено Нотаріальною палатою України та підпорядкованими їй суб'єктами. НПУ – це ключовий, недержавний орган із широкими делегованими повноваженнями в сфері управління нотаріатом та діяльністю його представників. Дана палата незалежна від державних структур та об'єднує всіх, без виключення, нотаріусів. Його структуру складають спеціальні органи, З'їзд нотаріусів України, Рада Нотаріальної палати України, Президент, Перший віце-президент та Віце-президент Нотаріальної палати України, Ревізійна комісія, а також Комісія з питань професійної етики нотаріусів. Вони забезпечують функціонування та реалізацію основних повноважень Нотаріальної палати України, а також вирішення найбільш значимих питань професійної діяльності нотаріусів. Крім вказаних органів, в системі Нотаріальної палати України створюються допоміжні колегіальні, дорадчі органи, мета роботи яких – це більш глибока та якісна реалізація окремих функцій із забезпечення нотаріального самоврядування та захисту професійних інтересів та прав нотаріусів. На місцевому рівні представництвом нотаріусів займаються Відділення Нотаріальної палати України, виконують надані їм повноваження в межах окремих територій.

Ключові слова: нотаріат, професійне самоврядування, Нотаріальна палата України, комісії Нотаріальної палати України, з'їзди.

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APPLICATION OF SPECIAL KNOWLEDGE IN THE INVESTIGATION OF CRIMINAL OFFENSES COMMITTED BY MEDICAL PROFESSIONALS

Abstract. ***Purpose.*** The purpose of this article is to examine the issue of applying special knowledge in the investigation of criminal offenses committed by medical professionals. ***Results.*** The article is devoted to the study of the necessity of utilizing special knowledge during the investigation of criminal offenses committed by medical professionals. It explores the significance of such knowledge in the investigative process, particularly in assessing evidence related to violations of professional duties by healthcare workers. The paper highlights the importance of involving experts to conduct forensic examinations, evaluate medical documentation, and establish facts that may be crucial to criminal proceedings. It is emphasized that the use of special knowledge helps ensure objectivity and impartiality in the investigation of complex cases within the medical field, which is essential for achieving justice and protecting patients' rights. ***Conclusions.*** The effective use of special knowledge provides a comprehensive approach to analyzing the professional actions of medical practitioners and their consequences. It contributes to appropriate legal assessment, determining the scope of criminal liability, and identifying the responsible individuals. A particularly important aspect is the evaluation of whether a medical professional had the capacity to prevent adverse outcomes, taking into account their knowledge, skills, and available resources. Involving medical experts in the investigation of such offenses enables adherence to the principles of fairness, objectivity, and scientific validity in procedural decision-making. However, it is also crucial to ensure a high level of professional training for both experts and investigators, their competent cooperation, and the clear regulation of procedures for engaging special knowledge within the framework of current legislation. Thus, the application of special knowledge in the investigation of criminal offenses committed by medical professionals is a necessary condition for effective law enforcement, safeguarding the rights of victims, and upholding the principle of legality.

Key words: criminal offenses, medical professionals, special knowledge, investigation, expert.

1. Introduction

The relevance of the study on the application of special knowledge in the investigation of criminal offenses committed by medical professionals is determined by several factors. First and foremost is the complexity of criminal offenses in the medical field. The professional activities of healthcare workers are based on specialized medical knowledge, which makes the investigation of offenses in this sphere particularly challenging. Establishing the fact of a breach of professional duties requires not only legal, but also medical expertise.

Another factor is the growing number of complaints regarding the improper performance of professional duties. The increasing number of patient reports submitted to law enforcement agencies concerning professional misconduct by medical practitioners underscores the importance of employing special knowledge to ensure objective and impartial investigations.

Furthermore, the evidentiary value of medical documentation must be emphasized. Medical records constitute a key source of information in the investigation of criminal offenses related to medical practice. However, proper analysis and evaluation of such documents necessitate the involvement of individuals with special knowledge.

Thus, research into this topic is crucial for improving the effectiveness of investigations in the medical field, enhancing the process of evidence assessment, and ensuring legality and fairness in the activities of law enforcement agencies.

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Several Ukrainian scholars have studied the use of special knowledge in the investigation of criminal offenses committed by medical professionals. A.V. Honcharuk has authored research on the application of medical knowledge in forensic science, particularly in the context of investigating offenses committed by healthcare workers. O.I. Baranovskyi has examined the interaction between medical experts and investigators in cases requiring the application of specialized medical knowledge. V.V. Kolisnyk has addressed the use of special knowledge in criminal cases involving medical errors or the improper performance of professional duties by medical professionals. N.P. Platonova, an expert in forensic science, has studied the application of medical knowledge in cases involving unlawful medical activities. V.M. Boiko has explored the classification of criminal offenses committed by medical professionals and the role of special knowledge in establishing causal links between medical actions and treatment outcomes.

These scholars have made significant contributions to the development of theoretical and practical aspects of utilizing special knowledge in the investigation of criminal offenses committed by medical professionals, particularly in the context of unlawful medical practice.

The aim of this article is to explore the issue of using special knowledge in the investigation of criminal offenses committed by medical professionals.

2. Specifics of Conducting Expert Examinations in the Investigation of Criminal Offenses Committed by Medical Professionals

Procedural forms of using special knowledge include: engaging a specialist to participate in investigative actions; conducting forensic examinations; and obtaining clarifications from experts through interrogation (Shchur, 2010). Non-procedural forms include: organizing departmental audits and making procedural decisions based on their outcomes; consulting with a specialist outside the framework of investigative actions; and the investigator's personal review of specialized literature and legal acts related to the investigated event.

According to paragraph 2.13 of the *Instruction on the Conduct of Forensic Medical Examinations*, an investigator has the right to be present during a forensic medical examination, except in cases involving individuals of the opposite sex when the examination requires exposure of the body. In criminal cases related to improper performance of professional duties by medical practitioners, the investigator's presence during the expert examination enables them to pose additional clarifying questions. This helps form a clearer understanding of the course of treatment that resulted in adverse outcomes (Boiarov, 2000). It also contributes to the proper legal classification of the offense and guides the further direction of the investigation (Bilenchuk, Hel, Saltevskyi, Semakov, 2001).

The investigator's presence allows them to receive additional explanations from the expert regarding the methods and results of the examination, observe how the criminal actions are reflected in medical records or biological samples, and respond more promptly to the findings of the examination—initiating necessary investigative actions without having to wait for the official expert report. However, in practice, investigators are rarely present during forensic medical examinations in proceedings related to Article 138 of the Criminal Code of Ukraine due to their workload and a generally negligent attitude toward this recommendation.

It should be emphasized that L.H. Dunaievska had long stressed the need to legally establish the investigator's right to be present during forensic examinations in the Criminal Procedure Code of Ukraine (Dunaievska, 2006). Nevertheless, this provision was not implemented in either the 1960 CPC of Ukraine or the current version. In our opinion, this gap should be addressed by amending Article 40 of the CPC of Ukraine to explicitly provide that "the investigator is authorized to be present during forensic examinations and, upon request, to receive explanations from the expert regarding the actions performed and the conclusions drawn during the examination."

Both scholars and practitioners argue that the investigator's presence during the examination helps to avoid unfounded repeat or supplementary examinations, and minimizes the need to summon experts for interrogation to clarify parts of the conclusion that remain unclear for various reasons (Panov, Shepitko, Konovalova, 2007). Moreover, such presence may benefit the expert if additional clarification is required, occasionally eliminating the need for supplementary materials and thereby shortening the duration of the expert study. Without a doubt, direct communication between the investigator and the expert facilitates the specification of certain aspects related to the subject of the examination in real time.

L.V. Pavlova defines forensic medical examination as a scientific and practical investigation of specific objects conducted by a physician to resolve medical and medico-biological questions that arise during pre-trial investigation and judicial proceedings (Pavlova, 2007). However, it is important to clarify that such examinations are carried out by forensic medical experts, while physicians of relevant specializations are involved when necessary or as pre-

scribed by law. Accordingly, a comprehensive forensic medical examination in the context of investigating criminal offenses committed by medical professionals should be understood as a scientifically and legally regulated study conducted by forensic medical experts, with the participation of specialized physicians, aimed at resolving specific medical and medico-biological issues of importance to the pretrial investigation and court proceedings.

3. The Role of Expert Commissions in Conducting Forensic Medical Examinations

An expert commission issues a conclusion following the examination of the objects provided by the investigator. In cases involving criminal offenses committed by medical professionals, the objects of forensic medical examination constitute a defined system composed of specific elements. The objective basis for detecting a disease and evaluating the actions of medical professionals lies in the regular emergence of data about them, as reflected by the inherent properties of all material objects, phenomena, and processes—including diseases and the actions of physicians.

Such objects include: medical documentation in established formats containing clinical data about the patient (e.g., outpatient medical records, inpatient medical records, ambulance transfer sheets); the patient themself, if further examination is necessary during the expert study; postmortem autopsy protocols with histopathological results; biopsy protocols of biological materials; histological samples (tissue and organ fragments from the corpse); forensic autopsy reports including laboratory data; records of clinico-anatomical conferences; results of departmental audits and quality control of medical services; and other case materials, such as statements, interview protocols of medical staff and witnesses, service characteristics of healthcare personnel, and licensing and accreditation documents of medical institutions (Baida, 2006).

O.O. Prasov outlines a list of typical and common questions that are generally addressed during a forensic medical examination. Among them are:

1. Was the diagnosis of the disease or injury timely and accurate?
2. Was the treatment provided to the patient or victim timely, comprehensive, sufficient, and effective?
3. Is there a causal relationship between the adverse treatment outcome and the nature of the diagnostics and treatment provided?
4. What could have been the likely outcome if proper and timely diagnosis and adequate treatment had been administered?
5. In the presence of diagnostic, examination, or treatment deficiencies—what were they, and how did they impact the patient's health or cause their death? (Prasov, 2007).

V.L. Burkatskyi emphasizes that expert commissions typically address questions such as the nature of the patient's illness, the correctness of the diagnosis and completeness of the examination, the quality of medical care provided or the actions taken by medical personnel, the consequences of improper treatment or actions, the possibility of preventing such outcomes, and the cause of death (Burkatskyi, 1990).

Based on the above provisions and analysis of case materials related to criminal offenses committed by medical professionals, a more specific set of questions can be proposed to guide the expert examination. These questions directly stem from the circumstances that must be established by the investigator when assessing the actions of individuals suspected of committing a criminal offense under criminal law. The expert, in turn, conducts a study of the materials provided in the case and draws conclusions based on applied specialized examinations.

Thus, it is advisable for the expert to focus on the following tasks: to determine whether the victim suffered from a specific disease, and if so, which one; to establish what type of medical care should have been provided for the identified pathology and which legal or normative acts (clinical protocols, standards, guidelines, etc.) regulate its delivery; to assess the predicted outcome for the patient had the appropriate medical care been provided, taking into account current medical knowledge; to determine whether the patient experienced any adverse effects as a result of the treatment, and if so, what those effects were and their severity; and to identify the existence of a causal relationship between the initial illness and the consequences that followed after the provision of medical assistance.

The answers to the above questions enable the determination of the victim's condition, the likely positive outcome had there been no treatment errors, as well as the nature and causes of the negative consequences inflicted on the victim's health or life.

The expert must also address the presence of deficiencies in the provision of medical services, specifically identifying which particular rules and regulations governing medical care were violated, and by whom. If multiple healthcare providers were involved in the treatment process, it is necessary to establish the responsibilities and actions of each medical professional, as well as their individual contributions to the final outcome. In the event that organizational shortcomings in the provision of medical care are identified, the responsible party should be determined based on the analysis of job descriptions and internal regulatory documents.

It is well-established in criminal law theory that the cause-and-effect relationship between an act and its consequences is an essential element in establishing criminal liability. This principle is considered axiomatic. Therefore, the expert should be asked to determine the existence of a causal link between the adverse outcome for the victim and the deficiencies identified in the medical care provided. It is necessary to analyze the mechanism by which each individual deficiency may have contributed to the outcome, in order to determine which specific action or omission resulted in harm. Additionally, the expert must assess whether the damage to the patient's health could have been prevented through the proper execution of medical duties.

Once the expert has identified the specific actions that led to serious consequences, it is important to assess whether the healthcare provider who administered the treatment possessed the necessary professional knowledge and skills required to provide adequate medical care in the given circumstances. The expert should also determine whether the medical professional had the actual opportunity to implement the required measures based on the conditions of time, place, and other relevant factors. If it is established that the provision of specialized care in accordance with the patient's pathology was legally or factually impossible, the expert must indicate the level of care that should and could have been provided in accordance with the professional obligations of the healthcare provider.

In order for the investigator to determine the suspect's subjective attitude toward their conduct, it is important to examine whether the physician—given their level of knowledge and competence—could have reasonably foreseen the adverse outcome resulting from their action or inaction.

All expert responses to the questions posed must be clearly presented in the expert opinion, grounded in scientific reasoning, and formulated in a manner that excludes ambiguity or the possibility of misinterpretation. In cases where experts are unable to provide answers, the reasons for this must be explicitly stated.

The expert commission must determine the presence or absence of defects in the actions of the medical professionals, establish the nature and causes of these deficiencies, and assess their impact on the outcome of treatment. Given that criminal liability in Ukraine is individualized, the experts should, to the extent possible, provide specific answers identifying which actions of which medical personnel led to harm to the patient's health or life.

During the examination, the commission must consider real-world factors related to organizational, logistical, and material resources that may have affected the treatment process. If such deficiencies are identified, the final report must specify who bears responsibility for addressing them and what caused the shortcomings (Hroshevyi, Stakhivskyi, 2006).

When discussing the specifics of preparing and appointing expert examinations in criminal proceedings of the type under study, it is important to highlight the procedures for collecting materials for handwriting and forensic technical examinations. These procedures have their own distinct features, particularly the requirement to obtain a substantial number of samples for comparative analysis, including free, conditionally free, and experimental samples of stamps (seals), handwriting (signatures).

The documents requiring examination are collected during such procedural actions as inspection, search, or temporary access to objects and documents, in accordance with the procedures previously described.

4. Conclusions

The application of specialized knowledge in the investigation of criminal offenses committed by medical professionals is a crucial tool for establishing the objective truth in criminal proceedings. The use of forensic medical examinations, specialized medical research, and the involvement of experts in the field of medicine enables a proper assessment of the actions or omissions of healthcare providers, the determination of whether their conduct complied with professional standards, and the identification of causal links between deficiencies in medical care and the resulting harm to victims.

The effective use of specialized knowledge ensures a comprehensive approach to analyzing the professional conduct of medical personnel and its consequences. This contributes to the proper legal assessment, determination of the boundaries of criminal liability, and identification of those responsible. In particular, an important aspect is the evaluation of whether the medical professional could have prevented the adverse outcomes, taking into account their level of knowledge, skills, and the resources available at the time.

Engaging medical specialists in the investigation of such criminal offenses ensures adherence to the principles of fairness, objectivity, and scientific justification in procedural decision-making. However, it is essential to guarantee a high level of professional training for experts and investigators, their competent cooperation, as well as clear regulation of the procedures for applying specialized knowledge within the framework of the applicable legislation.

Therefore, the application of specialized knowledge in the investigation of criminal offenses committed by medical professionals is a necessary condition for effective law enforcement, the protection of victims' rights, and adherence to the principle of legality.

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ЗАСТОСУВАННЯ СПЕЦІАЛЬНИХ ЗНАНЬ ПРИ РОЗСЛІДУВАННІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ, ВЧИНЕНИХ МЕДИЧНИМИ ПРАЦІВНИКАМИ

Анотація. ***Метою*** статті є дослідження проблеми використання спеціальних знань при розслідуванні кримінальних правопорушень, що вчиняються медичними працівниками. ***Результати.*** Стаття присвячена дослідженню питань щодо необхідності застосування спеціальних знань при розслідуванні кримінальних правопорушень вчинених медичними працівниками. У статті розглядається значення застосування спеціальних знань при розслідуванні кримінальних правопорушень, вчинених медичними працівниками. Аналізуються особливості розслідування таких кримінальних правопорушень, зокрема в контексті використання медичних знань для оцінки доказів, що стосуються порушень професійних обов'язків медичних працівників. У роботі акцентується увага на важливості залучення фахівців для проведення експертиз, оцінки медичних документів та встановлення фактів, які можуть мати вирішальне значення для кримінального провадження. Зазначено, що застосування спеціальних знань допомагає забезпечити об'єктивність та неупередженість при розслідуванні складних проваджень у медичній сфері, що є необхідним для досягнення справедливості та захисту прав пацієнтів. ***Висновки.*** Ефективне використання спеціальних знань забезпечує комплексний підхід до аналізу професійних дій медиків і їх наслідків. Це сприяє належній правовій оцінці, визначенню меж кримінальної відповідальності та встановленню винних осіб. Зокрема, важливим аспектом є оцінка можливості медичного працівника запобігти негативним наслідкам, враховуючи рівень його знань, навичок і доступні ресурси. Залучення фахівців із медицини до розслідування таких кримінальних правопорушень дозволяє дотримуватися засад справедливості, об'єктивності та наукової обґрунтованості під час ухвалення процесуальних рішень. Однак важливо забезпечити високий рівень професійної підготовки експертів і слідчих, їхню компетентну взаємодію, а також чітке регулювання процедур залучення спеціальних знань у рамках чинного законодавства. Таким чином, застосування спеціальних знань у розслідуванні кримінальних правопорушень, учинених медичними працівниками, є необхідною умовою для ефективного правозастосування, забезпечення захисту прав потерпілих і дотримання принципу законності.

Ключові слова: кримінальні правопорушення, медичні працівники, спеціальні знання, розслідування, спеціаліст.

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PRINCIPLES OF THE ORIGIN, FORMATION, AND DEVELOPMENT OF THE PROSECUTION SYSTEM ON THE TERRITORY OF UKRAINE

***Abstract*. Purpose.** The purpose of this article is to characterize the historical periods of the formation of the prosecution institution on the territory of Ukraine. ***Results*.** Until the 18th century, there were multiple attempts on the territory of modern Ukraine to establish state institutions whose functions were similar to those of classical prosecutorial bodies. However, by the late 17th and early 18th centuries, most of Ukraine's territory had already been incorporated into the Tsardom of Russia, and the country lacked a centralized and effective prosecution system at that time. It has been established that Ukraine's declaration of independence necessitated the formation of its own institutional and regulatory framework for the functioning of the prosecution system. Against the backdrop of the dissolution of the Soviet Union, this framework was essential to uphold and ensure legality within the newly independent state. Consequently, the 1990s became the starting point of a new, modern stage in the reform of prosecution bodies. It is emphasized that in 1996, the legal status of the prosecution service as a specific system of public authorities was enshrined at the constitutional level. In particular, Section VII of the Constitution of Ukraine, entitled "The Prosecution," clearly defined the prosecution's functions: the maintenance of public prosecution in court; representation of the interests of citizens or the state in court in cases determined by law; supervision over compliance with the law by bodies conducting operative and investigative activities, inquiry, and pre-trial investigation; and oversight of the legality of the execution of court decisions in criminal cases and the application of other coercive measures involving the restriction of personal liberty. ***Conclusions*.** It is concluded that the modern period, which began with Ukraine's independence in the 1990s and continues to this day, has been marked by significant improvements to the legal framework governing the prosecution system. These improvements include the development and adoption of new legal instruments that align with European standards and the constitutional enshrinement of the prosecution's legal status.

Key words: supervision, law, people's commissariat, officials, prosecution, reform, court decision.

1. Introduction

The activities of the prosecution service have consistently been the subject of scholarly research. However, no less important is the issue of its reform, as over the years the significance and role of the prosecution within the system of state law enforcement agencies have often been reoriented and, in some cases, radically transformed. Thus, the process of reforming the prosecution service is not a one-time event, but rather a series of deliberate actions rooted in a historical trajectory that mirrors the establishment and development of this institution as a whole.

When we look beyond the national experience of the development of prosecutorial bodies and consider the role of this institution globally, it becomes evident that the prosecution service has long been known to societies around the world.

The institution of the prosecution, in its modern sense, originated in 13th-century France. The first "prosecutors" were essentially lawyers hired by kings and feudal lords to represent them in specific cases and later to act as permanent legal representatives in court (Niroda, 2015). In its operations, the prosecution was subordinate to the French king. King Philip IV the Fair of France is considered the direct founder of the European prosecution system; he legally established the status and functions of the prosecution. On March 25, 1302, he issued an ordinance on permanent royal prosecutors, who operated in parliaments (judicial bodies in Paris, Tours, and Rouen) as well as before bailiffs and seneschals (local judges) (Sukhonos, 2001).

In medieval France, the primary purpose of the prosecution was to carry out criminal

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prosecution of individuals deemed undesirable by the monarch. The prosecution's core mission was to implement the will of the king, who determined the directions of its activities, organizational structure, and institutional framework. As early as 1586, a law on the prosecution was adopted, establishing its position within the system of state authorities (Kholodnytskyi, 2014).

Therefore, an analysis of global historical experience demonstrates that prosecutorial bodies not only evolved over centuries but also played a significant role in the mechanisms of state governance in various countries.

The purpose of this article is to characterize the historical periods of the formation of the prosecution institution on the territory of Ukraine.

2. The Emergence of Prosecutorial Bodies on the Territory of Ukraine

At the same time, the prosecution service, as a unified and organized structure of special governmental bodies, began functioning on the territory of Ukraine considerably later. This, in our view, was due to several adverse factors that significantly hindered the overall development of Ukraine as an independent actor on the international stage, including:

– the fragmentation of the state's territory;

– the absence of a centralized governmental apparatus;

– continuous political and military interference by foreign powers.

In light of the above, it can be stated that prosecutorial bodies, in the modern sense and form, did not exist in Ukraine for a long period. Nevertheless, the history of their formation includes a wide range of notable and instructive developments. Therefore, we propose dividing this historical process into four distinct periods, each with its own temporal boundaries, as follows:

– The first period: from the emergence of state formations on the territory of Ukraine until the 18th century;

– The "Imperial" period: from the 18th century to the 1920s;

– The "Soviet" period: from the 1920s to the 1990s;

– The modern period: from the 1990s to the present day.

When analyzing the first period of development and transformation of the prosecution service, it is important to note that within these chronological boundaries, the prosecution–as a specialized system of public authority–was only beginning to take shape. In particular, on the territories of states that included Ukrainian lands, there were numerous attempts to establish supervisory and control institutions. For example, the Code of Law (Sudebnik) of Grand Prince Ivan III of Moscow from 1487 stated: *"If a petitioner comes to a boyar, the boyar shall not dismiss him, but shall provide redress to all entitled to it"* (Lyskova, 2007). In essence, this provision granted boyars the authority to represent the state in various legal disputes.

During the period when large parts of Ukraine were under Polish and Lithuanian rule, a notable development occurred in 1578, when a special tribunal was established in Lutsk during one of the sessions of the Sejm of the Polish–Lithuanian Commonwealth. At the beginning of its activity, this tribunal annually elected a prosecutor (instigator). Supervisors of private estates would report to the prosecutor about claims and types of offenses. The prosecutor supervised the proper submission of claims to the tribunal court (Sverbyhuz, 1999).

A unique form of prosecutorial institution also existed in the Zaporizhian Sich. Regarding this, M.O. Potebenko noted: *"The position of prosecutor in the Zaporizhian Sich was held in high esteem. In the person of the prosecutor, the Kosh Otamans and Hetmans of the Ukrainian Cossacks–Ivan Pidkova, Yakiv Shakh, Severyn Nalyvaiko, Samiylo Kishka, Petro Sahaidachny, Hryhorii Chornyi, Mykhailo Doroshenko, among others–had a reliable assistant and guarantor of legality in the Sich"* (Potebenko, 2000).

Certain aspects of state oversight and legality on the territory of the Tsardom of Russia were codified in the Sobornoye Ulozhenie of 1649. This legal act granted subjects the right to address the Tsar with petitions (chelobitnye)–that is, with requests, complaints, or denunciations. These petitions were submitted by individuals and collective groups of nobles, townspeople, peasants, and other social strata, not only to the head of state but also to central and local authorities (Kovalchuk, 2008).

Thus, on the territory of present-day Ukraine, until the 18th century, repeated attempts were made to establish state institutions whose functions resembled those of classical prosecutorial bodies. However, by the late 17th and early 18th centuries, most of Ukraine's territory had already become part of the Tsardom of Russia, and the country in this period did not, in fact, possess a centralized and effective prosecutorial system.

Therefore, starting from the 18th century, the second, "Imperial" period of the development of the prosecution service began, marking its emergence as an independent state authority. This stage fully coincides with the "Petrine era"–a phase in Russian history characterized by numerous reforms initiated by Peter I. In the course of combating widespread official misconduct, embezzlement, bribery, and noncompliance with

imperial decrees, the first Russian Emperor established a fiscal service in 1711, which effectively performed prosecutorial functions.

According to the Decree "On Fiscals and Their Duties" of 1714, the responsibilities of fiscals included handling all "silent cases." Specifically, they were obliged to uncover and report–both secretly and openly–all offenders who had harmed the state and to prosecute them in court. Additionally, they had to report on certain cases where a person was unable to defend their rights for various reasons. Thus, the fundamental innovation of the fiscal institution lay in its combination of three key characteristics:

1. A general supervisory scope of competence;

2. The existence of territorially organized, hierarchically structured subdivisions, independent of local administrations;

3. The cross-estate principle of personnel selection (Banchuk, 2016).

A further major stage in the evolution of the prosecution service occurred during the reign of Catherine II. The division of the Senate into departments significantly increased the importance of the office of the Prosecutor General. As a trusted confidant of the Empress, the Prosecutor General coordinated the work of the Senate's departments and effectively assumed the role of a minister of internal affairs. By the last third of the 18th century, the Prosecutor General, while remaining the highest oversight authority, had essentially become the supreme body of general administrative governance.

A pivotal milestone in the reform of the prosecutorial system was the Judicial Reform of 1864, which is considered the most innovative, liberal, and technically successful among all the "Great Reforms" of Emperor Alexander II (Obsurna, 2012).

The essence of the prosecutorial reorganization according to the key principles of the 1864 reform lay in removing the function of general oversight from the prosecution service, although oversight of detention facilities was retained. Fundamentally, the main objective of the reform was to reorient the prosecutorial system along the lines of the French model (Paliuk, 2012).

In his study of the organization and functioning of the judiciary in the Taurida Governorate after the 1864 reform, I. I. Poliakov presents evidence illustrating the distinctive restructuring of the prosecution system. He emphasizes that although the prosecutorial bodies were incorporated into the judicial branch, they maintained their own distinct organizational structure. The uniqueness of the system lay in the fact that a separate prosecutorial body operated at each level of the general court system. These prosecutorial units were integrated into a centralized, hierarchical structure, headed by the Minister of Justice. As a result, the reformed prosecution service became one of the key components of the executive branch of government (Poliakov, 2001).

In addition, according to the Judicial Statutes of 1864, the prosecution service was entrusted with the following responsibilities:

– supervision of investigations and legality at all levels of the judicial system;

– prosecution in criminal cases;

– oversight of the enforcement of punishments;

– supervision of detainees and prisons, among other duties (Yarmysh, 2001).

In 1896, with the aim of organizing the prosecutorial system and supervisory activities in particular, M. V. Muravyov, then serving as Prosecutor General, issued a special directive outlining the core principles to be observed in the performance of prosecutorial duties. He emphasized that prosecutorial supervision varied in content and form. Substantively, it comprised three main areas:

1. Criminal prosecution in cases initiated in an official capacity, with the participation of prosecutorial oversight;

2. Supervision of legal compliance in matters within the judicial system's jurisdiction;

3. Participation in select administrative cases (Mavdryk, 2012).

Thus, during the Imperial period, the prosecution service acquired a distinct form that laid the foundation for the further development of this state institution. In particular, the functions, structure, scope of authority, and operational methods of the prosecutorial system were clearly delineated. At the same time, the direct predecessor of the prosecution service in independent Ukraine is the Prosecutor's Office of the Soviet Union.

It is important to note that although the USSR was formally a unitary state, some of its constituent republics retained significant elements of autonomy. This directly influenced the formation and development of various state institutions, including the prosecutorial system, which–while subordinated to a central authority in Moscow–nonetheless experienced the influence of national characteristics at the local level.

In the 1920s, the Prosecutor's Office of the Ukrainian Soviet Socialist Republic (Ukrainian SSR) was established. It later evolved into the prosecution service of independent Ukraine, a fact that logically marks the beginning of the third, "Soviet" period in

the institutional development of the prosecution system.

We agree with the scholarly view expressed by M. Ya. Mavdryk and M. M. Stefanchuk, who emphasize that the starting point in the development of the Prosecutor's Office of the Ukrainian SSR should be considered the Resolution of the All-Ukrainian Central Executive Committee dated June 28, 1922. According to this normative legal act, the prosecution service of the Ukrainian SSR was formally established as a separate department subordinate to the People's Commissar of Justice, who, by decision of the All-Ukrainian Central Executive Committee, was also appointed as the Prosecutor of the Ukrainian SSR (Mavdryk, 2012).

3. The Prosecutor's Office in the Ukrainian Soviet Socialist Republic

Subsequently, the activities of the Prosecutor's Office of the Ukrainian SSR were reformed in parallel with the overall development of the Soviet Union and the establishment of the USSR as a stable and active participant in the international arena. For instance, the 1936 Constitution of the USSR and the Law on the Judicial System of 1938 redefined the tasks and mandate of the prosecutorial system.

Article 12 of the Constitution stipulated that the Prosecutor of the USSR was entrusted with supreme oversight of the strict implementation of laws by all People's Commissariats, subordinate institutions, individual officials, and citizens of the USSR. According to Article 114, the Prosecutor General of the Soviet Union was appointed by the Supreme Soviet of the USSR for a term of seven years. The Prosecutor General, in turn, appointed prosecutors of republics, territories, and regions, as well as prosecutors of autonomous republics and autonomous regions for a five-year term (Article 115). District, regional, and city prosecutors were also appointed for five years by the republican prosecutors, subject to confirmation by the Prosecutor General of the USSR. Furthermore, the Constitution emphasized that the prosecutorial bodies functioned independently of any local authorities and were subordinate exclusively to the Prosecutor General of the USSR (*Constitution (Basic Law) of the Union of Soviet Socialist Republics, 1936*).

Based on the foregoing, it can be concluded that throughout the 1920s–1930s, the status of the Prosecutor's Office in the Soviet Union–and of the corresponding local bodies–was substantially strengthened, driven by the creation of a new legal framework in this field.

Further reforms of the Soviet legal system, including the prosecution service, aimed to expand the legal status of its officials. For example, the Civil Procedure Code of Ukraine of 1963 granted prosecutors a broad range of powers in civil proceedings. They were authorized to:

– file lawsuits;

– intervene in any civil case regardless of the procedural stage and issue legal conclusions;

– request cases from the courts and challenge judgments, rulings, and decisions in cassation or supervisory procedures;

– submit motions for review of decisions, rulings, and judgments based on newly discovered circumstances;

– supervise the legality of enforcement of court decisions, and more (Dunas, 2006).

The Soviet-Ukrainian prosecution service reached its most refined organizational and legal form in the 1970s–1980s. Supporting this conclusion is the adoption of the Law "On the Prosecutor's Office of the USSR" in 1979, which codified the main functions of the institution. According to this law, the Prosecutor's Office was responsible for:

– supervision of legality in the activities of state administrative bodies, enterprises, institutions, organizations, officials, and citizens (general supervision);

– supervision of compliance with laws in the activities of investigative and inquiry bodies;

– supervision of lawfulness during judicial proceedings;

– supervision of lawfulness in places of detention, pre-trial detention facilities, and during the enforcement of criminal punishments and other coercive measures imposed by the courts;

– combating violations of laws related to the protection of socialist property;

– combating crime and other legal violations, conducting criminal investigations, initiating criminal proceedings, and ensuring the inevitability of criminal liability (*On the Prosecutor's Office of the USSR, 1979*).

4. The Prosecutor's Office in the Period of Ukraine's Independence

Ukraine's attainment of independence necessitated the creation of its own material and normative legal framework for the functioning of the prosecutorial system. Against the backdrop of the dissolution of the Soviet Union, such a framework was crucial for ensuring legality and the rule of law within the territory of the new state. Accordingly, the 1990s may be regarded as the starting point of a new, modern stage in the reform of the prosecutorial bodies.

Notably, in 1991, Ukraine adopted its first national law titled "On the Prosecutor's Office". According to Article 1 of this legal act, the primary task of the Prosecutor's Office of Ukraine was to exercise prosecutorial supervision over the observance and proper application of laws

by the Cabinet of Ministers of Ukraine, ministries, other central executive authorities, state and economic administration bodies, military units, political parties, and others (*Law of Ukraine On the Prosecutor's Office, 1991*).

That same year, the Verkhovna Rada of Ukraine approved the Disciplinary Statute of the Prosecutor's Office of Ukraine, which established the rules of professional discipline as well as the procedures for encouraging or disciplining prosecutorial personnel (*On approval of the Disciplinary Statute of the Prosecutor's Office of Ukraine: Resolution of the Verkhovna Rada of Ukraine, 1991*).

In 1996, the legal status of the Prosecutor's Office as a distinct system of state authorities was enshrined at the constitutional level. In particular, Section VII of the Constitution of Ukraine, titled *"The Prosecutor's Office"*, explicitly defined its key functions, namely:

– representing the state prosecution in court;

– representing the interests of individuals or the state in court, in cases determined by law;

– supervising the observance of laws by bodies conducting operational and investigative activities, inquiry, and pre-trial investigation;

– supervising the enforcement of court decisions in criminal cases and the application of other coercive measures related to the restriction of personal liberty (*Constitution of Ukraine, 1996*).

It must be emphasized that the current stage in the development of the Prosecutor's Office of Ukraine is primarily characterized by active reform efforts aimed at building a prosecutorial system modeled after European standards. These reforms are driven by Ukraine's strategic aspiration to become a member of the European Union and to strengthen its role in the international arena.

5. Conclusions

Based on the analysis of the historical development of the Prosecutor's Office on the territory of Ukraine, this process can be logically divided into four distinct periods, namely:

– The first period, which spans from the emergence of state formations on Ukrainian territory up until the 18th century. A key feature of this stage is the absence of a prosecutor's office in its complete, modern form, particularly due to the territorial division of Ukraine among different states. Certain elements of supervisory activity over legality, as well as procedural and representative functions, were mostly performed by various state authorities. The legal traditions of the Tsardom of Russia, the Polish–Lithuanian Commonwealth, the Zaporizhian Sich, and other states that once included Ukrainian lands were analyzed as representative examples;

– The second "Imperial" period, lasting from the 18th century until the 1920s. During this phase, prosecutorial bodies began to develop as a distinct and independent institutional structure. A legal and functional framework was established, along with concrete methods, forms, and tools of operation. For instance, in the early 18th century, the fiscal authorities were introduced in the Russian Empire, which later evolved into a system of prosecutorial institutions. The Judicial Reform of 1864 under Emperor Alexander II significantly changed the legal status of the Prosecutor's Office, turning it into a body of the executive branch, headed by the Minister of Justice;

– The third "Soviet" period, which covers the years from the 1920s to the 1990s. Under Soviet rule, the Prosecutor's Office acquired the institutional form that would later influence the construction of similar institutions in independent Ukraine. The main characteristics of this period include: (1) the adoption of a legal act that comprehensively regulated all aspects of prosecutorial activity; (2) a clear definition of the office's functions; (3) the formation of a hierarchical system with distinctly defined powers for each level of prosecutorial bodies;

– The modern period, which began in the 1990s with Ukraine's independence and continues to the present day. This period is marked by significant improvement of the legal framework regulating the activities of the Prosecutor's Office. New normative documents have been adopted, whose provisions are closely aligned with European legal standards. Additionally, the legal status of the Prosecutor's Office was enshrined at the constitutional level, which reaffirmed its role as a key component of the state law enforcement system in a democratic society.

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ЗАСАДИ ЗАРОДЖЕННЯ, СТАНОВЛЕННЯ ТА РОЗВИТКУ СИСТЕМИ ПРОКУРАТУРИ НА ТЕРИТОРІЇ УКРАЇНИ

Анотація. Метою статті є характеристика періодів становлення інституту прокуратури на території України. ***Результати.*** На території сучасної України до XVIII століття здійснювались неодноразові спроби створення державних відомства, функції котрих були схожі з функціями класичних органів прокуратури. Однак, Україна, більша частина території якої у кінці XVII – початку XVIII століття вже перебувала у складі Царства Російського, фактично не мала в цей час централізованої та ефективної системи органів прокуратури. З'ясовано, що набуття Україною незалежності викликало необхідність формування власної матеріальної та нормативно-правової бази діяльності

системи органів прокуратури, яка на фоні розпаду Радянського Союзу була потрібна задля підтримки та забезпечення законності на території нашої держави. У зв'язку з цим 90-ті роки минулого століття, стали відправною точкою нового, сучасного періоду реформування органів. Наголошено, що у 1996 році, правовий статус прокуратури, як специфічної системи органів державної влади, набуває закріплення на конституційному рівні. Зокрема, у Розділі VII Основного закону, під назвою «Прокуратура», було чітко визначено функції останньої, а саме: підтримання державного обвинувачення в суді; представництво інтересів громадян або держави в суді у випадках визначених законом; нагляд за додержанням законів органами, які провадять оперативно-розшукову діяльність, дізнання, досудове слідство; нагляд за додержанням законів при виконанні судових рішень у кримінальних справах, а також при застосуванні інших заходів примусового характеру, пов'язаних з обмеженням особистої свободи громадян. ***Висновки.*** Зроблено висновок, що сучасний період, який розпочався з моменту набуття Україною незалежності, тобто, з 90-х років XX століття, та триває по теперішній час, розпочався за фактом набуття Україною незалежності. В його межах було суттєво вдосконалено правову базу, що регламентує діяльність досліджуваної системи державних органів, шляхом розроблення та прийняття нових нормативних документів, положення яких максимально відповідають європейським стандартам, а також закріплення правового статусу прокуратури на конституційному рівні.

Ключові слова: нагляд, закон, народний комісаріат, посадові особи, прокуратура, реформування, судове рішення.

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ESTABLISHMENT OF JOINT INVESTIGATION TEAMS IN THE INVESTIGATION OF CRIMINAL OFFENSES AGAINST PEACE AND SECURITY OF MANKIND

Abstract. ***Purpose.*** The purpose of this study is to provide a theoretical analysis and examine the feasibility of establishing joint investigation teams (JITs) in the investigation of criminal offenses against peace and security of mankind. ***Results.*** The article examines the peculiarities of establishing JITs in the investigation of war crimes. It is noted that the issue of war crimes and holding perpetrators accountable remains one of the key challenges of contemporary international law. Ukraine, in its efforts to document the crimes committed by the Russian Federation, relies on the norms of international humanitarian law and cooperates with international organizations, including the International Criminal Court (ICC). The creation of the CICED (Core International Crimes Evidence Database) is identified as an important step toward improving international criminal justice and coordinating investigations related to international crimes such as war crimes, crimes against humanity, and genocide. CICED is expected to become a crucial tool for storing, processing, and analyzing evidence arising from such investigations, playing a key role in ensuring access to this evidence for various legal actors. Furthermore, Eurojust provides essential legal support by assisting in the preparation of agreements—such as the agreement establishing a JIT in Ukraine—and ensuring compliance with international legal standards. This enables national authorities to operate effectively within international procedures and contributes to harmonizing national and international legal mechanisms. It is argued that national legislation must clearly define the procedure for creating JITs, their powers, and the scope of their activities. This would prevent legal uncertainty in the formation of such teams and ensure their efficient functioning. ***Conclusions.*** One of the main challenges is the need to align procedures for collecting, exchanging, and disclosing evidence among countries. Legislation should clearly regulate this process to ensure the confidentiality, security, and legal admissibility of the collected evidence. Given the requirements for data protection, especially in the context of international investigations, it is important to develop procedures that ensure the proper legal safeguarding of data during its exchange between states. This also includes adherence to standards for the protection of human rights, particularly in cases involving the collection of information about individuals under investigation.

It is also crucial to establish effective mechanisms for cooperation with international organizations such as Eurojust, the International Criminal Court, and other states. This will allow Ukraine to effectively integrate into the international justice system and ensure a proper level of legal cooperation. Such cooperation includes determining the legal status of deployed investigators and prosecutors, as well as addressing issues related to the use of means such as weapons, if necessary, to ensure the security of the investigation.

Key words: war crimes, investigation, International Criminal Court, joint investigation teams, criminal offenses against peace and security of mankind.

1. Introduction

The issue of war crimes and the prosecution of those responsible represents one of the key challenges of modern international law. Ukraine, in its efforts to document the crimes committed by the Russian Federation, adheres to the norms of international humanitarian law and cooperates with international organizations, in particular the International Criminal Court (hereinafter – ICC).

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The principle of universal jurisdiction, which applies to war crimes, enables states to prosecute individuals suspected of committing such acts regardless of where the crimes were committed. This creates a legal basis for international justice, even if the perpetrators are not present within the territory of Ukraine.

In this context, Joint Investigation Teams (hereinafter – JITs) play a significant role in the investigation of international crimes, particularly war crimes, crimes against humanity, and acts of terrorism. Their activities facilitate the coordination of efforts between different countries, the exchange of evidence, and the simplification of extradition procedures for suspects.

One of the first precedents of effective international cooperation in the criminal prosecution of individuals responsible for crimes related to the Russian Federation's war against Ukraine was the investigation into the MH17 tragedy. At present, the JIT continues its work in investigating war crimes committed by Russian military personnel on the territory of Ukraine.

The MH17 case became a landmark example of international justice, demonstrating the importance of thorough evidence collection, inter-state coordination, and adherence to legal standards even under complex circumstances. The District Court of The Hague delivered its ruling based on a robust evidentiary base, including satellite imagery, intercepted communications, witness testimonies, and a reconstruction of the missile's trajectory. This once again confirms that international crimes require high-quality evidence, enhanced inter-state cooperation, and the establishment of JITs for the investigation of such criminal offenses.

Among the scholars who have addressed issues of modern international law, particularly crimes against humanity, the following authors should be noted: N.V. Driomina, N.A. Zelinska, A.A. Maievska, among others. However, certain aspects of this issue remain subject to academic debate and require further scholarly exploration, especially in light of the full-scale invasion of Ukraine by the Russian Federation.

The purpose of this study is to conduct a theoretical analysis and explore the feasibility of establishing Joint Investigation Teams in the investigation of criminal offenses against peace and the security of mankind.

2. Investigation of Criminal Offenses Against Peace and the Security of Mankind

Following February 24, 2022, the war that the Russian Federation had been waging against Ukraine since 2014 entered a phase of full-scale armed conflict. This significantly altered not only the domestic political situation in Ukraine but also the international legal landscape. The Russian aggression has been unequivocally condemned by the majority of the world's nations and has become the subject of investigations in international courts, including the International Criminal Court (ICC) and the International Court of Justice (ICJ).

According to the data of the Prosecutor General's Office of Ukraine (hereinafter – PGO), as of mid-April 2023, **86,820** crimes of aggression and war crimes had been registered, including:

1. **Violations of the laws and customs of war** (Article 438 of the Criminal Code of Ukraine – CCU);
2. **Planning, preparation, initiation, or waging of an aggressive war** (Article 437 CCU);
3. **War propaganda** (Article 436 CCU).

In addition, **17,128** offenses against the foundations of Ukraine's national security have been recorded, with information about them also entered into the Unified Register of Pre-Trial Investigations. Among them:

1. **Encroachment on the territorial integrity and inviolability of Ukraine** (Article 110 CCU);
2. **High treason** (Article 111 CCU);
3. **Collaborationist activities** (Article 111-1 CCU);
4. **Aiding the aggressor state** (Article 111-2 CCU);
5. **Sabotage** (Article 113 CCU).

In the principal case concerning the aggression of the Russian Federation, **647 individuals** have already been identified as suspects (Official website of the Prosecutor General's Office: statistical information, 2024).

These figures demonstrate the unprecedented scale of war crimes and crimes against Ukraine's national security, necessitating a systematic approach to their investigation. It is crucial not only to document each individual instance but also to build a comprehensive evidentiary base for future judicial proceedings, particularly before the ICC.

The national criminal proceedings conducted by Ukraine are closely interconnected with international cases. For instance, the Prosecutor General's Office cooperates with the International Criminal Court, Eurojust, other international organizations, and national law enforcement agencies of partner countries. This interaction enables not only the documentation of crimes but also the provision of international legal support for prosecution.

One of the avenues of Ukraine's cooperation with the international community in the context of forming Joint Investigation Teams (JITs) is through collaboration with **Eurojust** (the European Union Agency for Criminal Justice Cooperation). Eurojust plays a crucial role in

coordinating national investigations, especially with regard to crimes of a transnational nature. Its mechanisms allow countries to exchange evidence, align legal strategies, and avoid duplicating investigative measures.

Additionally, Eurojust's efforts are focused on supporting JITs, as the agency facilitates real-time operational information exchange between participating states and simplifies legal cooperation among national authorities (The work of the joint investigative group in the process of documenting crimes of the Russian Federation: the military experience of Ukraine, 2023).

Key aspects of JIT operations under Eurojust coordination include:

– **Simplified evidence exchange** – participating countries can share evidence more quickly and efficiently, which is critical for collecting materials in war crimes cases.

– **Coordination across jurisdictions** – ensures a unified legal approach and prevents duplicate investigations in multiple countries.

– **Preparation for a potential international tribunal** – collected evidence may serve as the foundation for future international prosecution of perpetrators.

– **Strengthening the role of the United States in investigations** – the Memorandum of Understanding with the U.S. Department of Justice allows for the involvement of American experts, which is of strategic importance for future proceedings.

A vital step in ensuring effective investigation of international crimes committed during the war is cooperation with the International Criminal Court. Legislative amendments to Ukraine's Criminal Procedure Code that permit ICC representatives to conduct procedural actions on Ukrainian territory are a significant element of this collaboration.

Eurojust plays a pivotal role in ensuring the effective functioning of JITs, especially in the context of global and highly complex investigations such as those concerning war crimes. Thanks to the operational, analytical, legal, and financial support of Eurojust, participating countries can focus on the core investigative tasks while minimizing logistical and organizational burdens (Official website of the European Union Agency for Criminal Justice Cooperation, 2023).

The main aspects of support provided by Eurojust include:

Technical support. Ensuring that the joint investigation teams (JITs) are equipped with the necessary tools for communication and information processing—such as mobile phones, laptops, scanners, and printers—enables efficient and uninterrupted work, even under field conditions.

Financial support. Reimbursement of travel, accommodation, and other essential expenses significantly reduces the financial burden on participating countries and ensures the continuity of JIT operations. This type of funding is crucial, as it allows for the uninterrupted involvement of necessary experts and specialists, regardless of financial constraints.

Analytical support. The structuring of available data and evidence allows for the effective organization of investigations and the establishment of a foundation for subsequent legal actions at both the national and international levels. Eurojust contributes to forming a comprehensive picture of events, which is critical in complex cases such as war crimes (Official website of the European Union Agency for Criminal Justice Cooperation, 2023).

Overall, Eurojust plays an indispensable role in investigations that require international coordination and resource pooling, particularly in cases involving war crimes and crimes against humanity.

The creation of the **Core International Crimes Evidence Database (CICED)** represents a significant step forward in enhancing international criminal justice and the coordination of investigations into international crimes such as war crimes, crimes against humanity, and genocide. CICED is designed to serve as a vital tool for storing, processing, and analyzing evidence collected during such investigations, and it plays a key role in facilitating access to this information for various actors within the legal process.

Key features and advantages of CICED include:

– **International coordination.** CICED allows for the centralized storage of evidentiary materials originating from multiple jurisdictions. This is particularly important in cases where suspects are located in different countries and witnesses or victims are dispersed globally. The database facilitates information sharing and ensures coherent cooperation among international bodies such as the International Criminal Court, law enforcement agencies, and non-governmental organizations.

– **Analytical functionality.** Given the vast volume of data stored in CICED—including thousands of events, testimonies, and pieces of evidence translated into multiple languages—the database plays a crucial role in processing and analyzing information. This functionality enables investigators and prosecutors to quickly locate relevant testimonies and facts that support or refute specific allegations, thereby contributing to more efficient judicial proceedings.

– **Multilateral access.** To ensure effective use of CICED, access is granted to a broad

range of investigative stakeholders, including law enforcement officials, prosecutors, judges, international institutions, and human rights NGOs. This ensures that all parties have access to verified and standardized information, thereby promoting transparency and fairness in legal processes.

It is important to emphasize that CICED is not limited to the war in Ukraine. It was designed to serve as a **universal tool for** processing evidence in all international crimes investigated by Eurojust and its international partners. In the future, the database may also be utilized in connection with other armed conflicts occurring elsewhere in the world, which significantly enhances its relevance in the global context.

Thus, CICED has the potential to become a powerful instrument for improving the **efficiency of international investigations**, enhancing coordination among states and institutions, and ensuring greater transparency and reliability in evidence collection and processing. Ultimately, this contributes not only to more effective justice but also to securing accountability and redress for victims of international crimes.

3. International Cooperation in the Investigation of Criminal Offences Against Peace and Security of Humanity

The establishment of the **International Centre for the Prosecution of the Crime of Aggression against Ukraine (ICPA)** marks a significant step in strengthening international cooperation to ensure accountability for the crime of aggression committed against Ukraine. The Centre is expected to contribute to the reinforcement of the international legal system and play a key role in the investigation and collection of evidence related to the crime of aggression.

As previously noted, the primary objective of the ICPA is to support and enhance investigations into the crime of aggression. This includes securing the collection and analysis of relevant evidence, which is of critical importance for the formulation of international indictments and the prosecution of responsible individuals.

The ICPA operates as an integral part of Eurojust's support within the **Joint Investigation Team (JIT) for Ukraine**. This enhances the potential for information exchange and coordination of efforts at the international level, as centralized support allows for more efficient and timely investigations. Such coordination can be decisive for obtaining additional evidence and ensuring clear interaction among partner countries.

In addition, the ICPA aims to provide **financial, operational, and logistical support** to partner countries. This includes funding for investigative activities, reimbursement of logistical expenses, and assistance in the mobilization of resources necessary for evidence gathering. These forms of support contribute to the more effective implementation of investigations and promote international cooperation.

Importantly, the establishment of the Centre provides partner states with access to essential resources and opportunities to participate in investigations into the crime of aggression. This fosters **greater international cooperation and engagement** across jurisdictions and facilitates the involvement of a broader range of countries in efforts to achieve justice for the victims of aggression.

The investigation of crimes of aggression involves complex work related to gathering evidence that may be difficult to access or of strategic importance. Accordingly, the ICPA plays a crucial role in creating mechanisms for the **collection, preservation, and analysis** of such evidence, thereby strengthening international criminal justice.

Moreover, Eurojust provides substantial legal support by assisting in the **preparation of agreements**, such as the one establishing the JIT in Ukraine, and ensuring compliance with international legal standards. This enables national authorities to operate effectively within the framework of international legal procedures and promotes **harmonization**between national and international legal mechanisms.

When joint investigations are required, parties typically rely on a **model agreement** adopted in 2003, as recommended by relevant international guidelines. This model is designed to be flexible and adaptable to the specific circumstances of each case, which is essential given the unique features and demands of every investigation.

According to legal experts, the agreement establishing a JIT constitutes an **international treaty**, and as such, should be treated accordingly under international law. A key issue, however, is that national legislation—specifically the **Criminal Procedure Code of Ukraine (CPC)**—does not always clearly regulate the process of concluding such agreements, which complicates the legal integration of international standards into domestic practice.

Currently, **Ukrainian legislation does not adequately regulate this matter**. Neither the existing CPC of Ukraine nor **Draft Law No. 7330** (on amending the CPC to improve the operation of JITs), which is under consideration in the Verkhovna Rada, provides detailed regulation on the formation of JITs, including the procedure for concluding agreements with competent authorities of foreign states.

This creates a degree of **legal uncertainty**, as the establishment of JITs often requires a clear

legal framework to prevent potential conflicts between national and international procedures. Therefore, it is essential that Ukraine addresses this issue through appropriate legislative action in the near future (Criminal Procedure Code of Ukraine, 2012; Draft Law No. 7330, 2022).

Thus, **Ukraine's national criminal procedural legislation requires improvement**, particularly concerning the mechanisms and procedures for the establishment and functioning of JITs (Criminal Procedure Code of Ukraine, 2012). While this mechanism is actively used, its legal regulation needs to be more precisely defined to ensure effective cooperation between states in the context of international investigations.

We believe that **the procedure for establishing JITs, their powers, and scope of activity must be clearly prescribed in national legislation**. This would eliminate legal ambiguities during the creation of such groups and ensure their effective functioning.

One of the main challenges is the need to **harmonize procedures for the collection, exchange, and disclosure of evidence** among countries. Legislation should clearly define rules governing this process to ensure **confidentiality, security, and legal admissibility** of the evidence collected.

Considering **data protection requirements**, especially in the context of international investigations, it is essential to develop procedures that ensure proper legal safeguards for data exchanged between states. This also applies to compliance with **human rights standards**, particularly in cases involving the collection of information about individuals under investigation. Furthermore, mechanisms for cooperation with international bodies—such as **Eurojust**, the **International Criminal Court**, and other states—must be well-established. This would allow Ukraine to effectively integrate into the **international system of justice** and ensure a high level of legal cooperation. Such mechanisms should also address the **legal status of seconded investigators and prosecutors**, including provisions related to the use of equipment or even weapons, if necessary, to ensure the safety of investigative operations.

The current **Criminal Procedure Code of Ukraine** does not provide detailed regulation on the operation of **Joint Investigation Teams (JITs)** but merely permits their establishment within the framework of international cooperation. Specifically, **Article 571** of the CPC allows for the creation of JITs for pre-trial investigations into offences committed in the territories of multiple states or where the interests of multiple states are affected. However, as previously noted, the article does not provide a clear procedural framework or mechanisms for the organization and functioning of such teams (Criminal Procedure Code of Ukraine, 2012).

At present, the **Office of the Prosecutor General of Ukraine (OPG)** is designated as the authority responsible for reviewing matters related to the establishment of JITs. This means that the OPG acts as the central body coordinating and deciding on the creation of these teams. However, the initiative for creating a JIT may come from either Ukrainian pre-trial investigation authorities (such as investigators or prosecutors) or competent bodies of foreign states who may approach the Ukrainian side with such a request.

In addition to legal and regulatory challenges, there are numerous **practical difficulties** associated with investigating international crimes during wartime. These challenges extend beyond organizational issues and include **serious security threats to investigators**, as well as **technical and legal complexities**.

As mentioned earlier, **investigative activities often take place in areas that are mined or located near the frontline**. This poses severe risks to the lives and health of investigators, sappers, and other personnel involved in the process. Addressing this issue requires **specialized demining resources**, proper planning, coordination with security forces, and the involvement of international demining experts.

Evidence collection in active combat zones is also a highly complex process that demands careful handling. The gathered evidence must be **properly documented and preserved** to ensure its admissibility in court. In particular, documenting crime scenes is extremely difficult in wartime conditions due to ongoing shelling and constantly changing environments. In such circumstances, adhering to **evidence preservation standards** becomes a major challenge.

Exhumation of bodies, especially in combat areas, is an extremely complex and dangerous task. It requires **significant resources, time, and specialized equipment** to be carried out safely. Given that many bodies may be buried in **temporary graves** or even located in **current frontline zones**, well-organized **logistics** are essential for the transportation and forensic examination of the remains.

The **mass displacement of people** and changes in territorial control complicate the identification of **witnesses and victims' locations**. Moreover, involving them in further investigative actions—such as interrogations or investigative experiments—can be difficult due to security concerns, restricted mobility, and limited transportation options.

As the war in Ukraine is being waged by a state that systematically violates **international humanitarian law**, a number of legal challenges arise in the process of establishing facts related

to crimes of aggression and war crimes. It is essential that states cooperating within international investigation teams adhere to **common standards and principles** for evidence collection and its legal admissibility. Moreover, there may be difficulties with the **execution of international arrest warrants** or the **enforcement of judicial decisions** during ongoing hostilities.

The use of **modern technologies** for evidence collection and preservation—such as digital traces, mobile phone data, drone footage, and satellite imagery—may be hampered by the **destruction of infrastructure**, **disruptions in communication**, or **cyberattacks** on internet resources. This necessitates the engagement of **highly skilled specialists and** the use of **advanced tools** to ensure proper documentation and preservation of information.

4. Conclusions

In the context of war crimes and general legislative uncertainty, a key component in the investigation of international and war crimes is the use of existing **international tools and strategic guidelines**, along with the development of **national investigative practice**. The following instruments and recommendations are of critical importance for ensuring the proper conduct of investigations:

1. **The Guide to Collecting Evidence for the International Criminal Court and Documenting International Crimes** – This is one of the key resources for upholding standards in the collection and documentation of evidence admissible in international courts. Proper evidence gathering forms the foundation for establishing the guilt of perpetrators and ensuring that such evidence is recognized at the international level. Although wartime conditions complicate this process, the existence of such guides helps minimize errors and deficiencies related to the technical aspects of evidence collection (Guide to Collecting Evidence for the International Criminal Court and Documenting International Crimes, 2019).

2. **The Bournemouth Protocol on the Protection and Investigation of Mass Graves** – This document is crucial for the effective identification and documentation of mass graves, which often constitute primary evidence in war crimes investigations. Since such graves may result from international crimes (e.g., mass killings), it is essential to define clear procedures for their investigation and the handling of related evidence. The protocol ensures an appropriate level of protection and prevents evidence distortion during the investigative process (Bournemouth Protocol on the Protection and Investigation of Mass Graves, 2022).

3. **The Minnesota Protocol on the Investigation of Potentially Unlawful Deaths** – This document provides guidelines for investigating cases where there is a suspicion that a person's death resulted from human rights violations or war crimes. In the context of war crimes, it enables the collection of crucial data on the cause and circumstances of death, which is an integral part of the investigation (Minnesota Protocol on the Investigation of Potentially Unlawful Deaths, 2022).

4. **The Manual for Forensic Experts on the Investigation, Recovery, and Analysis of Human Skeletal Remains** – In situations where the victims of international crimes are buried or discovered in a condition requiring specialized forensic analysis, this manual plays a vital role in ensuring the correct procedures for the recovery and examination of remains. Such analysis can provide key insights into the method and time of death, as well as evidence of potential violence.

Thus, the role of **international organizations** such as the **International Criminal Court (ICC)**, the **United Nations**, **Eurojust**, and others becomes critical. These bodies not only provide **technical and financial support**, but also facilitate **coordination among states** and offer a common **scientific and practical foundation** for the investigation of international crimes. This cooperation helps strengthen the evidentiary base and increases the likelihood of successfully holding perpetrators accountable.

Joint Investigation Teams (JITs) play a central role in ensuring effective coordination between states, enabling the exchange of vital information and evidence. They also allow for faster responses to newly emerging facts and greatly simplify evidence collection in territories under enemy control or in active conflict zones.

To ensure the **reliability of the evidentiary base**, it is essential to employ **technological tools** such as digital technologies for data collection, storage, and exchange, as well as tools that enable on-site documentation of human rights violations (e.g., video recordings, photographs, geospatial data, etc.).

Taking this into account, there is a pressing need to further **enhance both national and international investigative mechanisms**, integrating domestic practices with international standards. Such alignment will allow for a more effective response to the challenges of investigating war crimes amid the realities of modern armed conflict.

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СТВОРЕННЯ СПІЛЬНИХ СЛІДЧИХ ГРУП ПРИ РОЗСЛІДУВАННІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ ПРОТИ МИРУ ТА БЕЗПЕКИ ЛЮДСТВА

Анотація. ***Метою*** дослідження є теоретичний аналіз та розгляд можливості створення спільних слідчих груп при розслідуванні кримінальних правопорушень проти миру і безпеки людства. ***Результати.*** У статті розглянуто особливості створення спільних слідчих груп при розслідуванні воєнних злочинів. Зазначено, що питання воєнних злочинів та притягнення винних осіб до відповідальності є одним із ключових викликів сучасного міжнародного права. Україна, працюючи над документуванням злочинів рф, керується нормами міжнародного гуманітарного права та співпрацює з міжнародними організаціями, зокрема Міжнародним кримінальним судом. Зазначено, створення бази даних CICED (Core International Crimes Evidence Database) є важливим етапом у вдосконаленні міжнародного кримінального правосуддя та координації розслідувань, пов'язаних з міжнародними злочинами, такими як воєнні злочини, злочини проти людяності та геноцид. CICED має стати важливим інструментом для зберігання, обробки та аналізу доказів, що виникають під час таких розслідувань, і відігравати ключову роль у забезпеченні доступу до цих доказів для різних учасників правового процесу. Слід додати, що Євроюст надає важливу юридичну підтримку, допомагаючи в підготовці угод, як, наприклад, угода щодо створення ССГ в Україні, а також у забезпеченні юридичної відповідності міжнародним нормам. Це дозволяє національним органам ефективно діяти в межах міжнародних процедур та забезпечує гармонізацію національних та міжнародних правових механізмів. Ми вважаємо, що на рівні національного законодавства має бути чітко прописана процедура створення спільних слідчих груп, їх повноваження та межі діяльності. Це дозволить уникнути правової невизначеності при створенні таких груп і забезпечить їх ефективну роботу. ***Висновки.*** Однією з основних проблем є необхідність узгодження процедур збору, обміну і розкриття доказів між країнами. Законодавство повинно чітко визначати правила для цього процесу, щоб забезпечити конфіденційність, безпеку та юридичну допустимість зібраних доказів. Враховуючи вимоги захисту даних, особливо в контексті міжнародних розслідувань, важливо розробити процедури, які дозволять забезпечити належну юридичну захищеність даних під час їх обміну між державами. Це також стосується дотримання стандартів щодо захисту прав людини, зокрема, у випадках, коли мова йде про збирання інформації щодо осіб, які підлягають слідству. Також важливо налаштувати механізми співпраці з міжнародними організаціями, такими як Євроюст або Міжнародний кримінальний суд, та іншими державами. Це дозволить Україні ефективно інтегруватися в міжнародну систему правосуддя і забезпечити належний рівень правового співробітництва. Це включає визначення правового статусу відряджених слідчих та прокурорів, а також питання щодо використання таких засобів, як зброя, у разі потреби для забезпечення безпеки розслідування.

Ключові слова: воєнні злочини, розслідування, Міжнародний кримінальний суд, спільні слідчі групи, кримінальні правопорушення проти миру та безпеки людства.

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DETERMINANTS OF EMBEZZLEMENT IN THE SPHERE OF OFFICIAL ACTIVITY

Abstract. ***Purpose.*** The purpose of the article is to analyze specific groups of determinants of embezzlement in the sphere of official activity, taking into account current challenges to Ukrainian state-building. ***Results.*** The article is devoted to examining the features of various groups of determinants of embezzlement in the sphere of official activity. It presents an analysis of approaches proposed by legal scholars and criminologists concerning the classification of determinant groups in relation to embezzlement committed through the use of official position. Based on these approaches, the author offers an original concept of a determinant complex of corruption-related criminality in the context of embezzlement committed through official activities. This complex includes: socio-economic determinants; political and legal determinants; security-related determinants; organizational and managerial determinants; cultural and psychological determinants. The article emphasizes that the identification of security-related threats is justified by the ongoing full-scale war, which has, firstly, increased the burden on the law enforcement system due to the rising number of criminal offenses and the complexity of their investigation amid wartime risks, and secondly, created favorable conditions for the commission of corruption-related economic crimes. Risks of unlawful embezzlement by officials also extend to humanitarian aid, as Ukraine receives substantial volumes of such aid to support both civilian and military needs under wartime conditions. ***Conclusions.*** It is concluded that each group of determinants of the examined category of crime requires further in-depth development at the level of relevant policy programs. Among the key measures to counteract corruption-related criminal offenses, including embezzlement, the following should be highlighted: strengthening independent financial control and auditing in the public sector; increasing the remuneration of civil servants to reduce incentives for unlawful conduct; establishing and actively implementing effective mechanisms for digital monitoring of financial transactions; improving the quality of criminal law provisions that stipulate liability for embezzlement involving abuse of official position, alongside enhancing penalties for such abuses; fostering legal culture and conducting anti-corruption educational initiatives, including those targeting individuals who, due to the absence of competitive selection during wartime, are appointed to positions and granted administrative and managerial functions for the first time.

Key words: embezzlement, abuse of official position, prevention, criminal offenses against property, corruption-related offenses, determinants.

1. Introduction

Crime as a whole, being a negative social phenomenon, has a destructive impact on socio-economic processes, national and public security, and poses a threat to the protection of the rights and legitimate interests of both individuals and legal entities. A particularly significant category of crime is corruption-related criminality, which undermines the authority of the state and its authorized institutions and affects other protected public interests, as such offenses often involve encroachments on property.

From this perspective, criminological analysis of the nature of criminal offenses involving embezzlement committed in the course of official activity, as well as the determinants of such conduct, plays an important role. Such analysis serves as a basis for the development and implementation of effective measures and mechanisms for preventing and countering these unlawful acts.

It is worth noting that the amendments introduced in 2015 to Article 45 of the Criminal Code of Ukraine eliminated legal debates regarding which criminal offenses fall under the category of corruption-related crimes. According to the note to Article 45 of the Criminal Code of Ukraine, "corruption-related criminal offenses under this Code shall include criminal offenses stipulated in Articles 191, 262, 308, 312, 313, 320, 357, and 410, if committed through abuse of official position, as well as the criminal offenses provided in Articles 210, 354, 364, 364-1, 365-2, and 368–369 of this Code" (Criminal Code of Ukraine, 2001).

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The issue of determinants of embezzlement in the sphere of official activity has been directly or indirectly addressed in the scholarly works of A.M. Boiko, I.M. Danshyn, O.M. Dzhuja, M.H. Kolodiazhnyi, O.H. Kalman, O.S. Bondarenko, B.V. Osadchyi, S.A. Shubina, O.V. Khutorianskyi, among others.

The purpose of this article is to analyze specific groups of determinants of embezzlement in the sphere of official activity, taking into account the current challenges facing Ukrainian state-building.

2. Foundations of the Criminalization of Official Activity

The challenges of combating criminal offenses related to the abuse of official position carry serious criminal-legal and social implications, as officials entrusted with making critical managerial decisions often misuse their authority for personal gain. Such actions understandably undermine public trust in government institutions and generate widespread societal dissatisfaction.

In general, the criminalization of official activity manifests in various forms, including offenses committed by representatives of law enforcement agencies and other state bodies responsible for maintaining public order; unlawful participation of public officials in entrepreneurial activities; interference with the administration of justice; and engagement in certain types of shadow activities that violate the law. The criminalization of official activity is a complex process, frequently characterized by self-organization and the application of innovative schemes. Importantly, the primary motivation behind such offenses is often not only illicit enrichment but also career advancement and the preservation of power.

Given the significant proportion of these criminal offenses involving unlawful embezzlement within the sphere of official activity—and considering the expanding range of property types that have become targets of misappropriation—the study of the determinants of such crimes remains highly relevant.

For example, according to statistical data from the Prosecutor General's Office, in 2021, a total of 11,092 criminal proceedings were registered under Article 191 of the Criminal Code of Ukraine, with 6,040 cases resulting in formal suspicion notices. In 2022, 6,284 proceedings were registered, with suspicions issued in 3,017 of them. However, in 2023, there was a renewed increase in such offenses, with 8,452 criminal proceedings recorded, and suspicions reported in 4,054 cases (Statistics of the Prosecutor General's Office, 2024).

It is noteworthy that the marked decline in such offenses in 2022 can be attributed to the national focus on resisting the full-scale war initiated by the Russian Federation. During this period, there was unprecedented national unity around the goal of preserving Ukrainian statehood, and the number of criminal offenses significantly decreased, particularly in the early months following the invasion. However, in 2023, the number of proceedings under Article 191 of the Criminal Code increased by 1.5 times, which may be explained by society's gradual adaptation to wartime conditions and a return to detrimental behavioral patterns that fuel the commission of criminal acts, including embezzlement in the public service sector.

As noted by O.V. Shemyakin, corruption-related crime should be understood as "a relatively widespread negative socio-legal phenomenon that directly encroaches on the established order of official activity within legal entities of both public and private law, as well as the procedure for the provision of public services by non-official persons for the purpose of obtaining undue benefit. Corruption crimes can be committed within state authorities and administrative bodies, as well as in private legal entities and professional domains associated with the provision of public services" (Shemyakin, 2013).

It is appropriate to distinguish two groups of crimes based on the types of criminal offense elements that include features essential for classifying them as corruption-related: "In the first case, this refers to a qualified offense, in which the qualifying feature is the method of commission—namely, abuse of official position—provided for in a specific part of an article of the law as an additional element; in the second case, it refers to a basic offense, i.e., the crime is inherently of a corruption nature, which characterizes the entire article, not just a separate part" (Mashlyakevych, 2015). The subject of our study focuses specifically on the determinants of the first category of criminal offenses.

In criminology, the causes and conditions of crime are generally unified under the broader concept of *criminological determinants*. With respect to embezzlement—particularly in the sphere of housing and communal services—S.A. Shubina, O.V. Khutoryanskyi, and D.M. Tychyna argue that "the most productive way to identify and explain the factors of embezzlement-related criminality in Ukraine lies within a structural-functional analysis of the spheres and mechanisms of reproduction of such crimes, particularly corruption-related offenses. These serve as the criteria for structuring the set of determinants, within which the following are identified: socio-economic, organizational-managerial, legal, and cultur-

al-psychological factors" (Shubina, Khutoryanskyi, Tychyna, 2023).

B.V. Osadchyi, studying the determinants of crimes involving embezzlement, misappropriation, or unlawful acquisition of property through abuse of office, maintains that "the entire set of factors that determine crimes of this kind should be divided into the following groups: political and economic transformation; legislative shortcomings; socio-cultural factors; globalization and external challenges" (Osadchyy, 2023).

M.I. Melnyk classified the determinants of corruption-related crime according to the spheres in which it proliferates as follows: "1) political; 2) economic; 3) organizational-managerial; 4) legal; 5) ideological; 6) moral-psychological; 7) others" (Melnyk, 2002). Similarly, T.V. Kornyakova identifies political, economic, legal, organizational-managerial, and socio-psychological criminogenic factors contributing to corruption-related criminality (Kornyakova, 2009).

3. Analysis of Determinants of Corruption-related Crime in the Sphere of Official Activity

Taking into account the approaches of the aforementioned scholars, it is considered appropriate to structure the determinant complex of corruption-related crime in the context of embezzlement involving official activity as follows:

– **socio-economic determinants**;
– **politico-legal determinants**;
– **security-related determinants**;
– **organizational and managerial determinants**;
– **cultural and psychological determinants**.

Let us briefly analyze selected groups from this classification.

Socio-economic determinants generally reflect the tendency whereby a low level of social welfare and the failure to ensure the level of social protection declared by the state lead to the deterioration of social guarantees for the population and a decrease in quality of life, which in turn generates a desire to "compensate" for such shortcomings through unlawful means aimed at improving one's personal living standards. It is also important to consider that a high level of economic crime is inversely proportional to the level of economic growth in the country. This results in low economic well-being among the population, which, prior to the full-scale invasion, was already characterized by the presence of only a small middle class (sources estimate that the middle class in Ukraine accounted for merely 7–8%, with this figure declining further following the onset of the war). Embezzlement, as a form of misappropriation, is no exception, as declining income levels among public officials, financial hardships, and the imbalance between remuneration and the scope of authority increase the risks of abuse.

Politico-legal determinants encompass, first of all, the tendency within the Ukrainian governance and political systems for individuals who often lack understanding of the mechanisms of a rule-of-law state in a market economy to participate in political processes. Their participation is primarily motivated by the desire to lobby for personal or third-party business interests. This, coupled with low political culture and the absence of effective mechanisms for political accountability, leads to an increase in both the frequency and severity of embezzlement offenses committed through abuse of office—including by high-ranking public officials and representatives of the business elite.

As for the **legal prerequisites**, despite the establishment and functioning of an anti-corruption justice system, there remain issues concerning the quality and coherence of anti-corruption legislation in general, and criminal law in particular. These shortcomings result in legislative competition and conflict during the classification of identified acts of embezzlement committed through abuse of office, leading to misapplication of the law—an issue repeatedly highlighted by the Supreme Court in its reviews of judicial practice.

Efforts to eliminate corruption risks in both existing and draft laws and regulations are guided by the provisions of the *Law of Ukraine on Prevention of Corruption* (2014) and the *Procedure for Conducting Anti-Corruption Expertise* (2015), which regulate the conduct of anti-corruption assessments of both current and proposed legal acts. However, the conclusions of such assessments are advisory in nature.

According to the current anti-corruption legislation, "mandatory anti-corruption expertise is carried out by the Ministry of Justice of Ukraine, except for draft legal acts submitted to the Verkhovna Rada of Ukraine by Members of Parliament. In those cases, expertise is conducted by the relevant parliamentary committee responsible for anti-corruption policy" (*Law of Ukraine on Prevention of Corruption*, 2014). Additionally, the National Agency on Corruption Prevention (NACP) "may, on its own initiative and in accordance with its established procedure, conduct anti-corruption expertise of draft legal acts submitted to the Verkhovna Rada of Ukraine or the Cabinet of Ministers of Ukraine. To this end, the Cabinet of Ministers must send it all relevant draft legal acts. The Agency shall inform the respective parliamentary commit-

tee or the Cabinet of Ministers of the conducted expertise, which serves as grounds for suspending the review or adoption procedure of the draft act for up to ten days" (*Law of Ukraine on Prevention of Corruption*, 2014).

We believe that in order to improve the quality of normative legal acts and minimize corruption risks and lobbying influences, anti-corruption expertise should become an integral and **mandatory** part of the legislative process. Such expertise must be carried out by a body independent of the entity adopting the act—for instance, the National Agency on Corruption Prevention—which would prevent situations where representatives of the same body that adopts the act also evaluate it for corruption risks.

We support the view of M. Kolodyazhnyy that "war constitutes a powerful (from a criminological perspective) determinant of crime. It necessitates the transformation of the entire social system and its adaptation to meet the needs of society in the face of external military aggression. At the same time, war and crime exert a mutually determinative influence. Not only does war negatively affect society, but crime as a whole is also capable of shaping social processes and the behavior of members of society in specific ways" (Kolodyazhnyy, 2023).

Indeed, the increase in security threats resulting from the full-scale war has, first, led to a rise in the burden on the law enforcement system, including both the number of criminal offenses and the complexity of their investigation due to the risks posed by active hostilities. Moreover, it has created favorable conditions for corruption-related economic crimes. In some cases, public officials take advantage of the high level of public trust in the military; in others, they exploit shortcomings in property accounting systems—including military assets—to commit embezzlement through abuse of office.

Risks of unlawful embezzlement by public officials also arise in the sphere of humanitarian aid. In wartime conditions, Ukraine receives substantial volumes of humanitarian assistance intended to support both civilian and military needs. However, some officials abuse their positions to unlawfully misappropriate this aid or parts thereof, which not only causes material harm but also undermines public trust in state institutions.

For instance, according to the data of the Prosecutor General's Office, in 2021, 191 criminal proceedings were registered under Article 410 of the Criminal Code of Ukraine, with 18 indictments filed; in 2022, 239 proceedingswere registered, with 28 indictments; and in 2023, 216 proceedings, with 18 indictments (Statistics of the Prosecutor General's Office, 2024).

4. Conclusions

In conclusion, embezzlement through abuse of office constitutes a complex criminal offense, which arises from both objective socio-economic conditions and subjective motives of offenders in the spheres of public administration, finance, law enforcement, and the corporate sector.

We believe that each of the above-mentioned groups of determinants should be further elaborated at the level of specific targeted programs. However, among the key measures for combating corruption-related criminal offenses—including embezzlement—the following should be emphasized:

– strengthening independent financial control and audit in the public sector;

– increasing the remuneration of public officials to reduce incentives for unlawful conduct;

– developing and actively implementing effective mechanisms of digital monitoring of financial transactions;

– enhancing the quality of criminal law provisions that establish liability for embezzlement through abuse of official position involving different types of property, while simultaneously increasing sanctions for such offenses;

– promoting legal culture and conducting anti-corruption educational initiatives, including for individuals who, in the absence of competitive selection during wartime, are appointed for the first time to positions with administrative and managerial responsibilities.

Accordingly, it is essential to combine effective legislative initiatives, feasible technical solutions, and cultural changes to minimize abuse and strengthen public oversight.

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ДЕТЕРМІНАНТИ ПРИВЛАСНЕННЯ У СФЕРІ СЛУЖБОВОЇ ДІЯЛЬНОСТІ

Анотація. ***Мета.*** Метою статті є проаналізувати окремі групи детермінантів привласнення у сфері службової діяльності, враховуючи сучасні виклики для українського державотворення. ***Результати.*** Статтю присвячено розкриттю особливостей окремих груп детермінантів привласнення у сфері службової діяльності. Наведено аналіз підходів правників-кримінологів щодо класифікації груп детермінантів привласнення у сфері службової діяльності, на основі яких запропоновано авторське бачення детермінаційного комплексу корупційної злочинності в частині привласнення із використанням службової діяльності, до структури якого віднесено: соціально-економічні детермінанти; політико-правові детермінанти; безпекові детермінанти; організаційно-управлінські детермінанти; культурно-психологічні детермінанти. Акцентовано, що виділення безпекових загроз зумовлено повномасштабною війною, що призвело, по-перше, до зростання навантаження на правоохоронну систему в кількості вчинюваних кримінальних правопорушень, в складності їх розслідування через ризики воєнних дій тощо, а також створило сприятливі умови для корупційних злочинів економічного характеру. Також ризики незаконного привласнення службовою особою існують також щодо гуманітарної допомоги, оскільки в умовах війни Україні надаються значні обсяги гуманітарної допомоги для підтримки цивільних та військових потреб. ***Висновки.*** Підсумовано, що кожна із груп детермінантів досліджуваної злочинності має бути надалі детально розроблена на рівні відповідних програм, проте серед основних заходів для протидії корупційним кримінальним правопорушенням, в тому числі, привласненню, є: посилення незалежного фінансового контролю та аудиту у державному секторі; підвищення рівня оплати праці державних службовців, щоб забезпечити втрату мотивації до правопорушень; створення та активне впровадження ефективних механізмів цифрового моніторингу фінансових операцій; підвищення якості кримінально-правових норм, що передбачають відповідальність за привласнення із використанням службового становища того чи іншого виду майна, з одночасним посилення покарання за зловживання службовим становищем; розвиток правової культури та проведення антикорупційних освітніх заходів, в тому числі, із особами, які нині за відсутності конкурсного добору в період війни призначаються на посади та наділяють адміністративно-господарськими функціями вперше.

Ключові слова: привласнення, використання службового становища, запобігання, кримінальні правопорушення проти власності, корупційні правопорушення, детермінанти.

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FOUNDATIONS OF SOCIO-LEGAL TRENDS IN THE IMPROVEMENT OF LEGAL REGULATION OF SOCIAL PROTECTION OF CUSTOMS OFFICERS

Abstract. **Purpose.** The purpose of this article is to identify the foundations of socio-legal trends aimed at improving the legal regulation of social protection for customs officers. ***Results.*** The article emphasizes that enabling customs officers to engage in continuous professional development, as a socio-legal trend in improving legislation on their social protection, is essential. This is because professionally developing employees are in a socially secure position for several reasons: first, they are able to exercise their right to a career, thereby enhancing their standard of living and job satisfaction; second, they are better equipped to perform their official duties in a professional manner, reducing the risk of situations that could endanger their own social security, as well as that of their colleagues and the public; third, they are more likely to exercise their freedom to work following the termination of employment in customs authorities, given their increased competitiveness in the labor market. Therefore, employment in customs authorities should not lead to professional degradation, but rather should contribute to strengthening the employee's labor potential. It is noted that the European integration process requires Ukrainian public authorities (in cooperation with civil society actors) to align their policies, regulations, and practices with the policies, legislation, and practices of the European Union. This alignment is necessary for potential EU membership or, at a minimum, for strengthening Ukraine's ties with the EU and its member states. ***Conclusions.*** The article concludes that the comprehensive improvement of the legal regulation of social protection for customs officers in Ukraine must take into account the identified key socio-legal trends in legislative support for employee protection, in accordance with the principle of relevance in legal regulation. Given the complexity of the socio-legal phenomenon of social security and the scale of the efforts required to ensure it, it is evident that legislators must base the law-making process on all the outlined socio-legal trends simultaneously, rather than prioritizing one or a few of them, in order to effectively achieve the goal of protecting customs officers.

Key words: legal regulation, social protection, customs officers.

1. Introduction

Compliance with the principle of relevance in the legal regulation of social protection for customs officers requires that such regulation be based on current socio-legal trends in the improvement of relevant legislation. In this context, socio-legal trends in the improvement of legal regulation are understood as prospective directions for enhancing the normative and legal framework for the social protection of customs officers, which take into account: first, the positive experience of foreign lawmakers in improving the framework for ensuring the social security of customs officers through social protection measures; second, current and potential challenges in ensuring the social protection of customs officers, arising from various factors, such as the ongoing war in Ukraine; third, the development of scholarly thought regarding the contemporary content of social protection for employees in general and for customs officers in particular, including an understanding of the breadth and depth of issues in the current normative and legal framework for social protection, as well as the prospects for resolving these issues.

2. Foundations for the Improvement of Legislation on Social Protection

Before addressing the stated objective, it is necessary to emphasize that the effectiveness of incorporating relevant socio-legal trends into the normative and legal framework of social protection for customs officers largely depends on the contexts in which these trends are inter-

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preted by legislators. In general, the following contexts for applying socio-legal trends in regulating the social protection of customs officers in Ukraine must be taken into account as part of a comprehensive improvement of the relevant legislation.

First, the context of Ukraine's European integration.

The European integration process requires Ukrainian public authorities (in cooperation with civil society actors) to harmonize their policies, regulations, and practices with those of the European Union in order to potentially gain membership or, at the very least, to strengthen ties between Ukraine and the EU as well as its member states. This integration process is multifaceted and has implications across various sectors, one of which is the legal regulation of social protection for customs officers. Accordingly, as a country pursuing European integration, Ukraine must consider the broader factors of legal Europeanization in improving the social protection framework for customs officers, including the following:

– **Social objectives of EU integration.**

A state seeking EU membership must meet certain social security standards, including in the customs sector, by establishing and maintaining effective systems of social protection for customs officers. Thus, the state is obligated to guarantee and strengthen labor and social rights, ensure decent working conditions, provide adequate remuneration, and introduce relevant benefits. In doing so, the state not only enhances its capacity as a welfare state and strengthens national security related to customs affairs but also demonstrates its commitment to creating working conditions for customs officers that comply with EU social standards (including those established by the International Labour Organization and the Council of Europe, which are also recognized within the EU).

– **EU values.**

Although the EU was initially formed as an economic union, it has evolved into a union of states that embody progressive civilizational values such as the rule of law, respect for human dignity and rights, freedom, democracy, equality, social responsibility, and social justice. Therefore, any state aspiring to join the EU must not only accept but also actively promote and implement these values. In the context of improving the legal regulation of customs officers' social protection, legislators must ensure the integration of these core values into the state's social policy (and, at the organizational level, into personnel and social policy), as well as into the practical implementation of legal norms concerning social protection. For instance, it is critically important to enshrine in current legislation the prohibition of workplace discrimination, the obligation to promote equality, and the protection of the rights and dignity of customs officers.

– **Application of the principle of non-regression in social protection standards.**

This principle means that even if certain EU member states maintain lower social protection standards for customs officers, Ukraine should not adopt these as exemplary models in the process of harmonization. Rather, Ukraine must aim to maintain or exceed its existing higher standards of social protection. In other words, guided by EU values, lawmakers should take a critical approach to adapting national legislation to EU standards and avoid using lower or overly abstract European benchmarks as justification for weakening the substance or effectiveness of social protection frameworks for customs officers. By following this approach and embracing EU values in this context, Ukraine will not only demonstrate its aspiration for EU integration but also its commitment to ensuring a high level of social security for customs officers.

Thus, taking into account the socio-legal trends in the regulation of social protection for customs officers currently observed in Ukraine and in other social, legal, and democratic European states, it can be concluded that Ukraine, moving within the framework of the European integration process, must assume responsibility–primarily social responsibility–for aligning its legislation, social policy, and practices with the standards in place within the EU, particularly in relation to the social protection of customs officers. This clearly indicates that the Europeanization of legislation on the social protection of customs officers involves not merely the formal compliance with various technical requirements related to the creation, amendment, or repeal of legal and regulatory provisions, but also the substantive transformation of the legal framework in this area.

Second, the context of Ukraine's democratization.

In a democratic state such as Ukraine, the socio-legal trends in regulating the social protection of customs officers must be interpreted and implemented in light of the country's broader democratization processes. Democratization, as a defining feature of a modern state, entails a transformation during which a country adopts democratic principles such as freedom of expression, transparent governance, and citizen participation in decision-making processes, including those concerning the regulation of social protection. A democratic society cultivates values such as social equality, social responsibility, and social solidarity; thus, in Ukraine, these principles must play a central role

in shaping the legal regulation of social protection for customs officers. Doing so ensures that the normative framework reflects the broader social transformation and is not merely a superficial expression of the state's social function with respect to this group of public servants.

Hence, the democratization context implies that the legal regulation of social protection for customs officers must involve the **genuine** participation of civil society actors (and not their symbolic or token involvement) in relevant law-making processes. This point cannot be overstated, since for laws and regulations to genuinely reflect societal values and the interests of specific social groups, the state must facilitate the **authentic** participation of all relevant stakeholders. Failing to do so may result in the adoption of legal norms that do not actually serve the interests of customs officers.

In emphasizing the importance of real participation by civil society actors in the processes of legal regulation, it is necessary to highlight that such actors should primarily include organizations that directly represent the interests of customs officers or their specific groups. This refers particularly to trade unions and other labor organizations, as they are most familiar with the social risks, challenges, needs, and aspirations of this group of working citizens and can thus contribute substantively to the regulatory process concerning social protection.

At the same time, it is important to acknowledge the concerns expressed by scholars regarding the declining authority and influence of certain civil society institutions, such as trade unions.

Consequently, in the midst of Ukraine's democratization–complicated and intensified by the full-scale war–the need to involve civil society actors (including trade unions, labor organizations, human rights groups, and advocates for vulnerable populations who may exercise their right to work in customs bodies) in the legal regulation of social protection for customs officers becomes increasingly urgent. Ignoring this necessity could undermine the potential benefits of socio-legal trends and distort them in practice. For example, if legislation concerning gender equality standards or mechanisms for preventing sexual harassment in customs authorities is adopted without the participation of women's organizations, such regulations risk becoming declarative, ineffective, or even producing new social risks for female customs employees. This, in turn, would jeopardize the effective functioning of the system of social protection for customs officers.

Third, the context of the rule of law in Ukraine.

The failure of lawmakers to properly ensure compliance with the principle of legal certainty in the area of social protection for employees clearly poses a risk to the implementation of the rule of law and, consequently, threatens the legal order of the state. This, in turn, increases the social risks associated with the performance of official duties by customs officers. As evidenced by the first and second sections of this study, the current legislation governing the social protection of this category of employees contains numerous shortcomings, starting with the fact that, to this day, even the goals and core objectives of the social protection of customs officers are not clearly defined in legislation or subordinate legal acts.

Fourth, the context of ensuring the effectiveness of the legal mechanism for the social protection of customs officers.

The legal regulation mechanism of social protection for customs officers in Ukraine is an integral structural component of the socio-legal regime that ensures their social security. It must be recognized that the effectiveness of this legal regulation mechanism directly affects the functioning of another key component of the socio-legal regime–namely, the legal mechanism of social protection itself.

Accordingly, the improvement of legal regulation in the sphere of social protection for customs officers–within the framework of contemporary socio-legal trends aimed at safeguarding workers' social security–should be guided by the following criteria of effective law-making:

1. **Comprehensiveness** of legal regulation, which demands that all aspects of social protection for customs officers be taken into account, based on the understanding that no element of ensuring social security for employees may be ignored or underestimated, and that all real and potential social risks associated with working in customs authorities must be anticipated and addressed.

2. **Clarity and precision** of legal norms, ensuring that laws are not drafted in vague or overly broad terms that could result in misinterpretation or inconsistent application in practice.

3. **Consistency** of legal regulation with the principles of law, existing legislation, Ukraine's European integration policy, and the evolving body of academic research on the social security of customs officers and their families.

4. **Adaptability** of legal regulation, reflecting the need for sufficient flexibility in legislative and regulatory acts to allow their adjustment to dynamic real-world circumstances that affect the social security of customs officers.

5. **Guaranteeing the operation** of a legal mechanism for the protection and restoration of customs officers' right to social protection–this involves creating and improving legislation

that establishes clear and effective forms, methods, and means of legal protection for this group of employees when their right to social protection is violated.

6. **Ensuring participation** in the law-making process of civil society actors (including academic experts) who are concerned with the implementation of the legal mechanism of social protection for customs officers or its specific target groups (e.g., war veterans, women, persons with disabilities, individuals with special family responsibilities).

7. **Timely revision and improvement** of existing legislation regulating the social protection of customs officers.

8. **Implementation of a monitoring mechanism** to ensure compliance with legislation on the social protection of customs officers, as well as the establishment of channels for feedback from customs employees regarding the adequacy of normative and legal safeguards for their social protection.

3. Socio-Legal Trends in the Legal Regulation of Social Protection for Customs Officers

Taking into account the above considerations, the following socio-legal trends in the legal regulation of the social protection of customs officers can be identified:

1. Ensuring social security for war veterans and persons with disabilities resulting from war (as well as persons with disabilities in general) who are employed by customs authorities. This trend is driven by the growing number of able-bodied citizens in Ukraine who hold the status of war veterans or have acquired war-related disabilities as a result of the full-scale invasion of the country. The risks of general population disability are also increasing. Therefore, current legislation must respond to these realities by legally ensuring socially secure conditions for the initiation, continuation, suspension, and termination of employment (or service) relations in customs authorities involving individuals from these population groups.

2. Advancing gender equality and preventing gender-based discrimination, gender-based violence, abuse, and sexual harassment in the workplace within customs authorities.

The social security of customs officers depends on a range of state measures aimed at neutralizing the negative effects of various social risks. Among these measures, particular attention must be given to promoting gender equality, which serves both as an instrument of social justice within customs authority teams and as a means of integrating these collectives into an inclusive society (Shkoda, 2023).

This influence manifests itself in several key ways:

– **First**, customs officers should not be exposed to social risks stemming from gender discrimination while performing their professional duties. Achieving such a level of social security relies on enabling all employees, regardless of gender, to hold positions, carry out responsibilities, realize their professional potential, and cultivate social capital. This allows individuals to exercise their right to work in a socially secure environment that respects career advancement, while also fostering an inclusive and healthy workplace. As a result, employees of all genders can fully realize their rights to various forms of social protection, feel valued and respected, and remain free from gender-biased treatment, sexual harassment, or any form of social injustice rooted in gender stereotypes.

– **Second**, the state's efforts to mitigate the negative effects of gender-based social risks are also reflected in the ability of male and female customs officers to fully realize their professional potential while maintaining a proper work-life balance (Shkoda, 2023). This is particularly important in the Ukrainian context, where entrenched societal traditions often impose dual burdens on women, requiring them to perform both professional duties at work and caregiving responsibilities at home–tasks not necessarily shared by male partners. Consequently, there is a pressing need for gender-sensitive measures to counteract the impact of social risks on the protection of women's rights in the workplace. For example, customs employees should have access to flexible work schedules or parental leave for childcare and other personal needs.

– **Third**, state-level mitigation of the negative effects of gender discrimination also includes cultivating a workplace culture of diversity and inclusivity within customs authorities. This approach fosters a mindset of tolerance, solidarity, and humanism among staff members and management. In this sense, equal respect for the dignity of men and women affirms the value of diversity in modern society and nurtures a culture of respect and tolerance–both toward gender equality and toward persons with disabilities, newcomers to the profession, and others (Shkoda, 2023).

In light of the above, it becomes clear that embedding the principle of gender equality in existing legislation–and implementing these legislative provisions at the organizational level–is essential for ensuring adequate social protection for customs officers of all genders.

3. Ensuring social security for individuals with special family responsibilities who are employees of customs authorities.

In the process of legally regulating the social protection of this category of employees,

the legislator must be aware of the current challenges faced by workers who additionally bear special family obligations. Therefore, it is essential to guarantee them a socially secure status that enables them to fully exercise their freedom to work (build a professional career) and fulfill an important social role expressed through their family responsibilities.

4. Ensuring social security for employees belonging to critical age groups (youth and individuals of pre-retirement age).

Employment in Ukraine's customs authorities should not only be socially secure but also provide a platform where every able-bodied citizen with the appropriate level of professional capacity (potential), regardless of age, has the opportunity to fully realize the right to work. This means that legislation should establish conditions that motivate young professionals to engage in long-term employment within customs authorities, where they can gain the necessary experience and skills, build a career, and earn a salary that allows them to lead a full and dignified social life. These conditions will help address youth unemployment and prevent staffing shortages in public service institutions.

Furthermore, the following issues must be considered in the legal regulation process.

First, the emergence of a **pension crisis**. This crisis is driven by demographic and cultural shifts, improved living conditions, and the desire of able-bodied individuals of retirement age to retire in order to preserve their health–aligned with recommendations from international organizations, such as the WHO (Arbuz, 2013). Not only in Ukraine but throughout Europe, policymakers are increasingly emphasizing the need to raise the retirement age as a solution to the pension crisis, which arises from the disproportion between the working and non-working population and contributes to staff shortages (Bilan démographique, 2022).

Second, legal regulation should address the **socially risky status of pre-retirement workers**, which manifests in two ways: on the one hand, these individuals may feel demotivated regarding professional development while also fearing job loss, knowing that age discrimination may hinder future employment opportunities. On the other hand, such risks are exacerbated when customs authorities' leadership exhibits age-based bias, deliberately avoiding the employment of individuals from this demographic group, even when they meet all necessary professional criteria.

5. Creating a healthy psychological climate and aligning working conditions in customs authorities with decent work standards.

Improving current legislation–especially provisions related to medical and labor-law aspects of social protection–must reflect the clear need to create and maintain conditions under which customs officers work in environments consistent with international standards of decent work. This also includes ensuring that leadership within customs authorities pays special attention to the physical and psychological health and well-being of their employees. Accordingly, the legislation should guarantee a real balance between work and personal life, as well as the possibility of exercising the right to leave in cases of professional burnout, among other factors.

6. Development and implementation of health protection protocols and occupational safety measures that consider the specifics of customs service work.

Current legislation requires comprehensive improvement to ensure genuine–not merely formal–health and safety protection for customs officers. This includes providing a working environment that is safe for life and health and eliminating occupational hazards specific to customs service work.

7. Ensuring a socially secure process of the establishment, course, and termination of labor relations with customs authorities' employees, taking into account the requirements of harmonious stability of labor relations.

Based on the concept of the harmonious stability of labor relations (Shvets, 2020), it is concluded that this approach should serve as the primary normative principle in regulating the sphere of labor and employment, as well as adjacent areas influencing the stability of the initiation, development, and termination of labor relations with customs officers.

9. **Strengthening public trust in customs authorities and respect for positions within these governmental bodies.**

10. In the process of legally regulating the social protection of customs officials, it is necessary to enhance the transparency and accountability of customs work, as well as the ethical standards and integrity of customs personnel. This is important because:

– Firstly, these conditions will mitigate factors that may render employees socially vulnerable;

– Secondly, under such conditions, society will show greater respect toward customs officials and have more trust in their work, thereby fostering social solidarity–particularly in matters concerning the social security of customs workers and their families.

9. Ensuring opportunities for continuous professional development of customs officers.

This socio-legal trend in improving legislation on the social protection of customs employees is

crucial because professional development contributes to their socially secure status. Specifically:

– Firstly, it enables them to realize their right to career growth, thereby improving their quality of life and job satisfaction;

– Secondly, it ensures they can perform their official duties with higher competence, avoiding situations that might threaten their own social security or that of their colleagues and surroundings;

– Thirdly, it allows them to exercise their freedom to work after leaving customs service, as they remain competitive in the labor market. Therefore, employment in customs authorities should not lead to professional degradation but should contribute to strengthening the labor potential of employees.

11. **Ensuring the social security of whistleblowers and informant employees who report misconduct by their colleagues within customs authorities.**

12. The development of legislation on the social protection of customs employees must continuously evolve in line with this socio-legal trend due to the importance of ensuring anti-corruption security for employees. This type of security is already being conceptualized by Ukrainian scholars (Hladkyi, 2022) as a factor in achieving social security for workers. This is especially relevant because:

– Firstly, corruption has long been a systemic issue in Ukraine;

– Secondly, corruption creates conditions under which customs officers may find themselves in a socially vulnerable position;

– Thirdly, customs officers' involvement in the socially significant mission of preventing corruption should not result in circumstances that compromise their own social security.

4. Conclusions

In conclusion, it should be emphasized that the comprehensive improvement of the legal regulation of the social protection of customs authorities' employees in Ukraine must take into account the outlined key socio-legal trends in the regulatory and legal framework for social protection, thereby aligning with the principle of relevance in legal regulation. Given the complexity of such a socio-legal phenomenon as social security, as well as the scale of efforts required to ensure it, it is evident that legislators, in the law-making process, should consider all of the aforementioned socio-legal trends simultaneously. Preference should not be given to only one or several of them if the ultimate goal is to effectively ensure the social protection of customs officers.

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ЗАСАДИ СОЦІАЛЬНО-ПРАВОВИХ ТЕНДЕНЦІЙ УДОСКОНАЛЕННЯ ПРАВОВОГО РЕГУЛЮВАННЯ СОЦІАЛЬНОГО ЗАХИСТУ ПРАЦІВНИКІВ МИТНИХ ОРГАНІВ

Анотація. ***Метою*** статті є з'ясування засад соціально-правових тенденцій удосконалення правового регулювання соціального захисту працівників митних органів. ***Результати.*** В статті наголошено, що забезпечення можливостей працівників митних органів щодо постійного професійного розвитку, як соціально-правова тенденція удосконалення законодавства про соціальний захист працівників митних органів важлива з огляду на те, що працівники, які професійним чином розвиваються, перебувають у соціально безпечному стані, оскільки: по-перше, мають змогу реалізувати право

на службову кар'єру, покращуючи рівень свого життя та задоволення від роботи; по-друге, можуть більш професійно виконувати свої службові обов'язки, не створюючи ситуацій, які загрожуватимуть власній соціальній безпеці та безпеці колег по роботі, оточуючих; по-третє, можуть реалізувати свободу праці після припинення роботи в митних органах, оскільки будуть конкурентоздатними на ринку праці. Отже, робота в митних органах не повинна призводити до професійної деградації, а сприяти посиленню трудового потенціалу працівника. З'ясовано, що процес європейської інтеграції передбачає, що українські суб'єкти владних повноважень (разом із суб'єктами громадянського суспільства) повинні працювати над узгодженням своєї політики, нормативних актів і практики з політикою, законодавством і практикою Європейського Союзу, щоб потенційно стати державою-членом або принаймні ще більш посилити зв'язки України з ЄС та його державами- членами. ***Висновки.*** Зроблено висновок, що комплексне удосконалення правового регулювання соціального захисту працівників митних органів в Україні має враховувати окреслені ключові соціально-правові тренди нормативно-правового забезпечення соціального захисту працівників, відповідаючи вимогам принципу актуальності правового регулювання. При цьому зазначимо, що, враховуючи складність такого соціально-правового явища, як соціальна безпека, а також масштабність справи її забезпечення, цілком очевидно, що нормотворці повинні виходити в процесі нормотворення одразу з усіх перелічених соціально-правових трендів, а не віддавати перевагу одному чи декільком з них, бажаючи таким чином досягти мети соціального захисту працівників митних органів.

Ключові слова: правове регулювання, соціальний захист, працівники митних органів.