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PROBLEM ISSUES OF APPLYING CURRENT LEGAL REGULATIONS TO AI-CREATED OBJECTS

Abstract. Systems using artificial intelligence (AI), as well as AI itself, are now undergoing rapid development and enhancement. Each year, the IT industry offers society increased opportunities and a broader range of applicability for AI. Such development is particularly evident in AI language models, which allow for direct communication with AI, and systems that generate audio and/or visual objects upon human request. Considering AI's growing capabilities in assisting or directly engaging in the creation of objects by humans or by AI under human requests, legislators face the challenge of determining the legal status of such objects. Since copyright law establishes specific requirements for authors and works, categorizing AI-created objects as copyright-protected works is now impossible. However, the lack of legal regulation regarding the status of relevant objects may create legal uncertainty and leave parties in legal relations unprotected. To regulate this issue, the Law of Ukraine "On Copyright and Related Rights" was adopted in a new edition, introducing sui generis rights into legislation. ***Purpose.*** The present article aims to examine the current problems concerning the legal status of AI-created objects, particularly those arising with the adoption of the new edition of the Law of Ukraine "On Copyright and Related Rights" regarding the regulation of non-original objects under sui generis. ***Methods.*** When writing the article, the author has applied research and special methods of scientific cognition, including analysis, synthesis, and comparison. The scientific novelty of the research involves the examination of the issues related to the application of current legislation to AI-created objects, taking into account substantive studies on the nature and characteristics of AI-generated objects compared to works protected by copyright. Such studies call into question the applicability of the current approach to AI-generated objects, treating them as non-original works. ***Results.*** The author identified inconsistencies between the nature of objects created via computer programs employing artificial intelligence and the legal definition assigned to such objects. Furthermore, it highlights the failure to consider the degree of human involvement in the creation of these objects when determining the ownership of proprietary copyright in relation to such objects. ***Conclusion.*** The article concludes the need for further improvement of existing copyright legislation in the context of sui generis rights to take into account a varying degree of human involvement in the creation of AI objects and expand user experience in protecting their rights to AI-created objects and/or those created with the assistance of AI.

Key words: copyright; sui generis rights; artificial intelligence; AI-generated objects.

1. Introduction. Problem statement. In today's globalized world, the development of information technologies persists, and societies are getting more and more tools to simplify and advance ordinary processes. New tools are introduced into user familiar systems which expand the range of capabilities. It leads to the emergence of new sectors of business, the economy, and human competence. Along with new information technologies, humanity and specialists face new challenges that require assessment and possibly further changes in the already established spheres of human existence. In recent years, releasing systems with artificial intelligence (hereinafter referred to as "AI") to the general public has been a breakthrough. In particular, there are artificial intelligence systems intended and trained for a specific narrow purpose, be it research, driving, data collection, or analysis, and systems created for less specific purposes, i.e., language models and AI systems that generate images or create musical compositions, etc. (hereinafter referred to as "creative AI models").

We believe creative AI models are also designed to introduce new opportunities to society and further promote AI and human interaction.

As noted above, the elaboration of new tools, products, and systems pursues not only a research objective but also a commercial one – a motivational component which is an integral

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part of many areas of development and research. Therefore, the implementation of specific products and tools creates new opportunities for society and a new economic sphere, which should be equally and thoroughly protected for further development.

The legal community and some groups of authors paid particular attention to creative AI models as AI actually creates objects. This raises questions about the protection of such objects, incl. under copyright, and whether someone owns the rights to these objects, if such rights arise at all.

The relevance of the topic concerned is driven by the lack of a unified approach and concept that would be exhaustive to settle the issue of proper protection of AI-created objects, in particular, creative AI models and the user of the system using AI, and the lack of sufficient legal certainty and a fair balance of rights of all participants in legal relations regarding such objects.

Many scholars and students have dealt with the issue of defining AI-created objects as ones that are subject to copyright protection and (not) recognizing AI as an author: Pavlo Voitovych, Kateryna Bondarenko, Ruslan Ennan, Alina Havlovska, Vladyslav Shliienko in the article "Objects of Intellectual Property Rights Created by Artificial Intelligence: International Legal Regulation", Viktor Savchenko and Oleksandr Tsvar in the article "Issues of Copyright for Objects Created by Artificial Intelligence", T. I. Begova in the article "Problems of Legal Protection of Objects Created by Artificial Intelligence", K. Militsyna in the article "Objects Created Using Artificial Intelligence and Artificial Intelligence Directly, and US Copyright".

The scientific novelty of the present article involves covering the problem of applying the current legislation to AI-created objects, taking into account thematic studies of the essence and characteristics of AI-created objects in comparison with copyright works. Such studies call in question the appropriateness of applying the current approach to AI-created objects as non-original objects.

The present article aims to examine the current problems of the legal status of AI-created objects, in particular, the one caused by the adoption of the new version of the Law of Ukraine "On Copyright and Related Rights" regarding the regulation of non-original objects by sui generis.

The article's purpose is part of a more general research task, which is to study the legal regulation of AI-created objects, the problems faced by the legislator and law enforcement, and the formulation of proposals for an approach that would correspond to legal relations involving such objects and would allow for such legal regulation in the future. In turn, this will prevent inconsistency and legal uncertainty in the event of a complication of relations and the development of artificial intelligence in the future.

When writing the article, the author applied general scientific and special method of scientific knowledge, analysis, synthesis, and comparison.

The main text comprises two sections which deal with sui generis subjects, an overview of the AI-created object, and the conclusions which present research findings and proposals.

2. The role of an individual and their involvement in the creation of an object by artificial intelligence

Under civil law, legal relations consist of objects and subjects, respectively, those who exercise and pursue rights and in respect of what they own and exercise rights. Copyright is exercised by copyright proprietors – the author and/or holder of property copyrights, who fully or partially exercises the property copyrights provided by law to such an object. The object is a work that meets legal requirements and has been created by the author.

The legislation of Ukraine stipulates that, first of all, the copyright proprietor is the author – the individual who created the object. The law does not state that someone other than an individual may be the author. A similar position prevails in the United States of America, according to which the author is an individual; another interpretation of the author as an entity other than an individual is impossible.

At the same time, the term "author" can be understood as both individuals and legal entities under the national legislation of the participating countries, as provided for by the Berne Convention and the Universal Copyright Convention (Voitovych, Bondarenko, Ennan, Havlovska, Shliienko, 2021, p. 511).

In addition, when analyzing the ability of AI to be an author, attention should be paid to the fact that the work's originality is the "criterion that characterizes the work as an outcome of the author's intellectual and creative activity and renders the creative decisions made by the author while creating the work" (Law of Ukraine "On Copyright and Related Rights", 2023). The originality criterion contradicts the position of recognizing AI as the author of the work and cannot yet be applied to artificial intelligence, and the author's awareness of the work, which is absent in AI, is required by most copyright laws (Voitovych, Bondarenko, Ennan, Havlovska, Shliienko, 2021, p. 514).

Based on such an understanding, and without allowing AI to be an author in copyright

terms, all AI-created "works" do not have protection or a particular belonging that would meet the principles of justice and balance of interests, as in the case of users, AI developers, and society as a whole, given the economic impact of such developments.

Thus, Militsyna K. notes that "*the current situation deprives investors and developers of incentives for the development of artificial intelligence ... that will affect science, training, and research since there will be less data that they can use under the terms of the doctrine of "fair use*" (Militsyna, 2019, p. 344).

On the other hand, granting authorship could take place, for example, in favor of the user who prompted AI to provide (create) a specific object. It is also possible to make arguments in the discussion to advocate the above thesis.

Such arguments hold that AI would not have created a specific object without the user and their prompt. In the prompt, the user embodies their vision, idea, perception, and possibly other details that have a significant manifestation of creativity. The prompt itself must also meet specific requirements for AI to process correctly and most likely provide the desired result – the object the user expects. The prompt can independently be the outcome of the user's intellectual and creative activity, and AI can act solely as a means that creates a tangible reflection of built-in outcome of intellectual or creative activity, which has the form of the prompt. That is, AI can be considered not as a creator but as a means used.

The above approach is not universal for any object that can be created by AI, but it can be taken into account for adopting the regulation that would most cover the interests of all participants in legal relations. However, it cannot be ignored that, in this case, the issue of object originality and the user's role and contribution in creating its tangible form is not settled.

3. Compliance of objects created with the help of artificial intelligence with the requirements for works

Another important aspect of copyright regarding AI-created objects is their compliance with the requirements for the work established by law for its "protection".

Many authors reckon that AI-created objects are not original – as mentioned above, citing the article Objects of Intellectual Property Rights Created by Artificial Intelligence: International Legal Regulation – but are only reproduction, copying, compilation of what has already been created and what AI memorized through machine learning; when "creating", AI does not realize the process of creation and its significance: there is no creative solution to the object itself, and the object is not an outcome of the creative or intellectual activity of AI.

Thus, attention is paid not only to the object in its independent meaning but also to the process of its creation, and the lack of human effort or intellectual and creative activity fundamentally distinguishes between what is created by man and what is created by AI.

In T.I. Begova's opinion "*... robots are not able to generate fundamentally new creative solutions or works following the example of the human mind and intellect. Original deliverables in machine learning are obtained either by copying already known human works, or by generating a programmed deliverable embedded in the algorithms of the AI software and hardware complex – artificial intelligence or a new compilation of already known solutions and embedded works is compiled by a neural network in software code or mathematically. In other words, artificial intelligence cannot be creative" (Begova, 2021, p. 20) (author's note: "robots" mean AI).*

However, the above position is not peremptory. AI may not be able to draw its own conclusions from the information obtained if such conclusions were not embedded during "learning", but in some cases, AI demonstrates the ability to perform activities that repeat human capabilities and processes.

Viktor Savchenko and Oleksandr Tsvar in their article summarize "*... AI-created copyright objects can meet all*" requirements imposed on copyright objects under the law, *and "... copyright criteria are abstract and absent in the legislation of most countries, limited only to the requirements for work originality (novelty) and human authorship"* (Savchenko, Tsvar, 2023, p. 70). Viktor Savchenko and Oleksandr Tsvar also give convincing in their opinion examples and explanations regarding the compliance of AI-created objects with copyright requirements for works and the option of the AI user to acquire the legal status of the creator of such an object.

Therefore, the non-originality of AI-created objects is not an axiom: it should be considered in a broader context, and at least the regulation of different AI-created objects may differ and be optional depending on the content of such an object and the degree of human involvement.

Given the widespread and progressive use of AI, as well as the growth of systems which are AI or use AI elements in their work, it is necessary to settle existing issues. If something that has the characteristics of a copyright object differs from other existing objects is potentially original, then it is expedient to resolve the issue of the legal status of these objects.

The adoption of the Law of Ukraine "On Copyright and Related Rights" No. 2811-IX

dated December 1, 2022, which entered into force on January 1, 2023 (hereinafter referred to as the "Law"), was an attempt to resolve the above issue in Ukraine. According to Article 33 of the Law, the legislator introduced the regulation of objects created by AI (or with the help of AI) through sui generis right, which aims to establish the legal certainty of the legal status of AI-created objects and the subjective composition of legal relations around such objects, the rights that arise and the scope of such rights of subjects, while avoiding equating such objects to works.

The law proposes to use the concept of "non-original object" in relation to AI-created objects, and such an object is required to (1) be different from "*other existing similar objects*"; and (2) created "*as a result of the functioning of a computer program without the direct participation of an individual in the creation of the object*". It is suggested not to include works created by an individual using computer technologies as non-original objects (Law of Ukraine "On Copyright and Related Rights", 2023).

Subjects of a suis generis right *may* be the right holders (or persons with licensing authority) of the computer program that created the object, or a legitimate user of the computer program. The Agreement may determine the ownership of suis generis rights to non-original objects.

Given the above provisions of the Law, it is seen that there are shortcomings that make their application contradictory and non-compliant with the actual needs of the subjects and inconsistent with the balance of subjects' rights in legal relations concerning objects. We offer you to consider further in more detail.

The use of the expressions "without direct participation" and "with the help of" looks contradictory. This is due to the fact that the computer programs (AI) considered in the relevant context are precisely intended for users, and the outcome of such employment by the AI user implies user involvement in the creation of an object to some extent. The creation of an AI object is not carried out independently, given the lack of the ability to independently initiate the creation of something, without user involvement. In particular, there is a lack of AI awareness of the very process of creation and its significance, as we considered above. Currently, the user's interaction with AI happens through the provision of a prompt to AI to be processed, and in response, AI will provide an answer and/or an object.

It is also important to note that the user, intending to create a specific object with the use of AI and providing a prompt to AI, can also carry out and/or is carrying out intellectual and creative activities that have expression.

Therefore, in an attempt to distinguish between the creation of objects by AI and the use of AI in order to create an object, the legislator shaped conditions of low legal certainty regarding the legal consequences of using AI in the creation of objects. Thus, under specific circumstances, it is impossible or difficult to reliably establish whether the participation of an individual in the creation of an object is sufficient to consider it created "with the use", and certainly not with "without the direct involvement" of an individual. This is especially true when both options can be upon using the same AI.

The consequences of uncertainty may be the incorrect attribution of an object not to the work but to a non-original object with different subjective composition, ownership and scope of rights that arise upon such kind of the object's creation.

Another drawback is the lack of a reference to who acquires a sui generis right to a non-original object after its creation: the user or the AI copyright holder (hereinafter referred to as the "copyright holder"). Since AI is a system/computer program that is provided by the copyright holder to the user, the terms of use are determined by the usage license, which usually comes in the form of an adhesion agreement. As a result, despite the degree of AI use, the user accepts the conditions provided by the copyright holder, and only the copyright holder personally determines what rights the user will acquire for the object created by AI (or with its use). Thus, the legal provisions provide the right holder with all the opportunities to determine the scope of the rights that the user receives. In our understanding and observation, it is very unlikely to include conditions by the copyright holder on the transfer to the user of all rights to the object, regardless of the degree of user involvement in the object's creation. In particular, the retention of rights to the object by the right holder entitles the latter to exercise unlimited control over the use and distribution of objects.

It is worth highlighting that taking steps to settle the issue of rights to objects created by AI is important and is better than leaving it unregulated. The introduction of regulation, albeit imperfect, is an action and development: it allows for improving such regulation, eliminating shortcomings, and resolving disputes.

4. Conclusions

Creating, implementing, and advancing new information tools and technological solutions is an ongoing process that sometimes precedes the human and professional understanding

of these processes and their consequences. However, the protection of all participants in legal relations and further stimulation of development is also important to the legal definition of the status of objects created by AI. The contradiction of such objects with the requirements of the legislation and current approaches should not limit society and individuals in the full and proper protection of their rights, achievements, and fruits of intellectual and creative activity.

The adoption of the Law of Ukraine "On Copyright and Related Rights" No. 2811-IX dated December 1, 2022 is an essential step towards the proper regulation of relations regarding objects created by AI, and "sui generis" right is an appropriate means to settle such relations, while maintaining the current approaches to copyright and human-created works. New laws may have drawbacks, but they should not stand in the way of further development and improvement, especially along with an increasingly better understanding of the reality in which we find ourselves.

Summarizing the above, it should be marked that there is a discrepancy between the essence of objects created with the help of artificial intelligence and the definition applicable to such objects, and this discrepancy only proves the simplification of the legal status and assessment of such objects. This, in turn, entails regulation which upends a fair balance and ignores the properties of the objects that they may own. The current legal regulation also assigns an important role on the conditions of AI use, which are established by the developer. This can lead to the deprivation of the user, who was directly involved in the creation of an object by artificial intelligence, of property copyrights (ownership rights of the subject of suis generis).

Taking into account the above, in the author's opinion, the most appropriate proposal is to improve the current legal regulation and:

(i) establish clearer criteria for classifying objects as objects of copyright or objects of suis generis, given the degree of human involvement in creating objects using AI or directly by it;

(ii) revise the wording "non-original objects" in favor of one that would regard the operational capabilities of AI and the characteristics of the objects it created;

(iii) allow AI users to obtain rights to objects created by AI (or with its help) and move away from the position that the AI developer / owner independently establishes or acquires the user rights to objects.

In the future, more profound studies of the interaction between users and artificial intelligence and objects created by artificial intelligence will establish the conditions for acquiring property and non-property rights and legal regulation for such objects, which:

(1) correctly and properly describes objects created by artificial intelligence;

(2) describes the appropriate scope of user participation in the creation of such objects for unconditional recognition of copyright;

(3) eliminates legal uncertainty regarding the belonging of objects to works or suis generis objects, taking into account the current requirements of the legislation;

(4) allows expanding the range and method of using artificial intelligence in its economic component.

References:

Tsivilniy kodeks Ukrainy [Civil code of Ukraine]. (2003, January 16) Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo. 2003, №№ 40-44, p. 356 [in Ukrainian].

Zakon Ukrainy Pro avtorske pravo ta symizhni prava [Law of Ukraine On copyrignt and related rights] (2022, December 1) Vidomosti Verkhovnoi Rady Ukrainy – Bulletin of Verkhovna Rada of Ukraine. Kyiv: Parlam. vyd-vo. 2023, № 57, art.166 [in Ukrainian].

Begova, T.I. (2021). Problems of legal protection of objects created by artificial intelligence. Aktual'ni problemy vitchyznyanoyi yurysprudentsiyi, (№ 6. 2021), 18-22. Retrieved from http://apnl.dnu.in.ua/6_2021/3.pdf .

Militsyna, K. (2019). Ob'yekty, stvoreni za dopomohoyu shtuchnoho intelektu i shtuchnym intelektom bezposerednio, ta avtors'ke pravo SShA [Objects created by artificial intelligence and artificial intelligence directly and copyright US]. Entrepreneurship, economy and law, (5/2019), 343-346. Retrieved from http://pgp-journal.kiev.ua/archive/2019/5/65.pdf [in Ukrainian].

Savchenko, V., Tsvar, O. (2023). Issues of copyright for objects created by artificial intelligence; Baltic Journal of Legal and Social Sciences, No. 3, 69-77. Retrieved from http://baltijapublishing.lv/index.php/bjlss/article/view/2167/2169.

Voitovych, P., Bondarenko, K., Ennan, R., Havlovska, A., Shliienko, V. (2021). Objects of intellectual property rights created by artificial intelligence: international legal regulation; Cuestiones politicas (Vol. 39, Nº 68 (Enero - Junio) 2021), 505-519. Retrieved from https://dspace.onua.edu.ua/server/api/core/bitstreams/0dbff818-b6c1-47cd-b24a-9d4181e00b83/content .

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ПРОБЛЕМАТИКА ЗАСТОСУВАННЯ ЧИННОГО ПРАВОВОГО РЕГУЛЮВАННЯ ДО ОБ'ЄКТІВ, СТВОРЕНИХ ШТУЧНИМ ІНТЕЛЕКТОМ

Анотація. У нинішній час системи, що використовують штучний інтелект (ШІ), і штучний інтелект як такий, знаходяться на етапі стрімкого розвитку та вдосконалення. З кожним роком ІТ індустрія пропонує суспільству більше можливостей та все ширше поле для застосування ШІ. Зокрема цей розвиток ми можемо бачити у мовних моделях ШІ, які передбачають пряму комунікацію людини з ШІ, та системах, що створюють аудіо та/або візуальні твори на запит людини. З огляду на збільшення можливостей ШІ щодо залучення у процес творення об'єктів людиною, та/або ШІ, на запит людини, перед законодавцем постає питання правового регулювання статусу таких об'єктів. Оскільки за законодавством про авторське право встановлюються вимоги до автора та твору, то віднесення об'єктів створених ШІ до об'єктів авторського права є неможливим. Однак, відсутність правового регулювання статусу певних об'єктів створює правову невизначенність і незахищеність суб'єктів прововідносин. З метою врегулювати правовий статус таких об'єктів було прийнято Закон України «Про авторське право та суміжні права» у новій редакції, і включення до законодавства права особливого роду (sui generis). ***Мета.*** Метою цієї статті є розгляд чинної проблематики щодо правового статусу об'єктів створених ШІ, зокрема тієї, яка виникла разом з прийняттям нової редакції Закону України «Про авторське право та суміжні права» в частині регулювання неоригінальних об'єктів правом особливого роду. ***Методи дослідження.*** При написанні статті використані загально-науковий та спеціальний метод наукового пізнання, аналіз, синтез, порівняння. Наукова новизна цієї статті полягає у дослідженні питання проблематики застосування чинного законодавства до об'єктів створених ШІ з урахуванням предметних досліджень сутності та характеристик об'єктів створених ШІ у порівнянні з творами, які є об'єктами авторського права. Такі дослідження є такими що ставлять під сумнів належність застосування чинного підходу до об'єктів створених ШІ, як неоригінальних об'єктів. ***Результати.*** Результатом дослідження є виявлення неузгодженості між сутністю об'єктів створених за допомогою комп'ютерних програм, що використовують штучний інтелект, та наданим визначенням для таких об'єктів, а також, неврахування рівня залученості фізичної особи у творенні таких об'єктів при визначенні належності майнових авторських прав на такі об'єкти. ***Висновки.*** Висновком цієї статті є констатація необхідності подальшого удосконалення чинного законодавства про авторське право в контексті права особливого роду (sui generis) з метою врахування різного ступеню участі людини у творенні об'єктів ШІ та розширенню можливості захисту користувачем своїх прав щодо об'єктів створених ШІ та/або за допомогою ШІ.

Ключові слова: авторське право; право особливого роду (sui generis); штучний інтелект; об'єкти створені штучним інтелектом.

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EXERCISE OF PERSONAL NON-PROPERTY RIGHTS ENSURING THE SOCIAL EXISTENCE OF A POLICE OFFICER IN UKRAINE

Abstract. ***Purpose.*** The purpose of this article is to examine the exercise of personal non-property rights that ensure the social existence of a police officer in Ukraine. ***Results.*** The article investigates the implementation of personal non-property rights that ensure the social existence of a police officer in Ukraine. It has been established that such rights, which belong to the individual, constitute part of the system of subjective rights, represent a real social phenomenon, arise in connection with the possession of non-material benefits, and serve as a legal mechanism for securing one's social existence. The article outlines the characteristics of these rights as they pertain specifically to police officers. It is concluded that these rights belong to the category of exclusive rights. The article highlights the particularities of the exercise of certain personal non-property rights by police officers. It is emphasized that the content of such rights constitutes a set of entitlements vested in the individual as the holder of these rights. It is proposed to include among these rights the right to freedom of literary, artistic, scientific, and technical creativity; the right to freedom of association; the right to peaceful assembly, among others. ***Conclusions.*** It is concluded that the personal non-property rights ensuring the social existence of a police officer in Ukraine belong to the group of exclusive rights. Their content encompasses a set of entitlements vested in the individual as the bearer of these rights. These rights incorporate both a positive aspect—legal recognition of a person's entitlement to a non-material benefit (right of possession) and the ability to use it (right of use) within the limits established by law and in accordance with its intended purpose and the police officer's personal interests—and a negative aspect, manifested in the right to demand that others refrain from infringing upon such benefit, thereby ensuring protection against violations. The identified personal non-property rights ensure the police officer's social existence and are characterized by the following features: personal nature, non-material essence, a specific object, and orientation toward satisfying physical (biological), spiritual, moral, cultural, social, or other intangible needs (interests).

Key words: personal non-property rights, police officer, right to a name, right to one's image.

1. Introduction

The issue of personal non-property rights has long held a prominent position in Ukrainian civil law scholarship. The effective guarantee of human rights is traditionally regarded as an inherent feature of a legal, democratic, and social state that operates under the rule of law. In any society, human rights constitute a fundamental legal institution that defines the legal status of an individual, determines permissible limits of influence upon them, regulates the extent of interference in the personal sphere, and provides mechanisms for ensuring and protecting rights and freedoms. Consequently, respect for human dignity as the highest social value must become a foundational principle of social life, including in Ukraine. Fundamental rights and freedoms belong to an individual from birth and are inalienable; thus, ensuring their realization is one of the core functions of the state.

As early as the beginning of the 20th century, scholars in the field of civil law, while analyzing the phenomenon of personal non-property rights, emphasized that the development of personality occurs primarily within a material context, which determines its further spiritual development.

Each branch of law governs a system of socially homogeneous relationships. As regards the subject matter of civil law regulation, it encompasses both property relations and personal non-property legal relations that ensure an individual's

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natural existence and social being, as well as the relations arising from the exercise of such rights (Civil Code of Ukraine, 2003). Personal non-property relations hold a central position due to their legal nature and content. It is evident that civil law, with its regulatory methods, is better suited than any other branch of law to ensure the realization of personal non-property rights.

The issue of the exercise of personal non-property rights by individuals has been explored in the works of D.V. Bobrov, T.V. Bodnar, V.I. Borysov, O.V. Dzer, A.S. Dovhert, I.V. Zhylynkova, V.I. Kysil, V.M. Kossak, O.V. Kokhanovska, O.D. Krupchan, N.S. Kuznetsova, I.M. Kucherenko, V.V. Luts, R.A. Maidanik, V.F. Maslov, H.K. Matviiev, O.A. Pidopryhora, O.O. Pidopryhora, O.A. Pushkin, Z.V. Romovska, M.M. Sibilov, S.O. Slipchenko, I.V. Spasybo-Fatieieva, R.O. Stefanchuk, Ye.O. Kharitonov, L.V. Fediuk, A.O. Tserkovna, S.I. Chornoochenko, M.L. Sheliutto, Ya.M. Shevchenko, S.I. Shymon, R.B. Shyshka, among others. However, despite the significant volume of academic work on the subject, numerous general theoretical and practical questions remain unresolved concerning the understanding and exercise of personal non-property rights that ensure the social existence of a police officer in Ukraine. The aim of this article is to explore the exercise of personal non-property rights that ensure the social existence of a police officer in Ukraine.

2. The Significance of the Issue of Personal Non-Property Rights

According to researcher T.O. Sofiiuk, the importance of personal non-property rights is well-recognized within civil law scholarship. In all rule-of-law states, human rights are acknowledged as a fundamental component of social life. By focusing on the core needs and functions of the human being, personal non-property rights contribute to the structuring of an individual's legal status, subordinating it to a defined system of legal norms. Human rights determine the mechanisms for lawful influence over individuals, delineate permissible limits of intrusion into their private lives, and establish legal guarantees for the realization and protection of their rights and freedoms. Throughout different historical periods, the issue of human rights has remained integral to the process of societal transformation in terms of education and cultural maturity, reflecting the intellectual and moral development of society. This imbues the issue of human rights with exceptional importance, connecting it deeply to the realms of philosophy, religion, and morality, and endowing it with the corresponding features. The rights of an individual relating to their intangible benefits are referred to as personal non-property rights (Sofiiuk, 2015).

Among the defining features of personal non-property rights are the following:

– they belong to every natural person from birth or by law;

– they lack economic content;

– they are inextricably linked to the individual (in this case, a police officer), who cannot waive such rights or be deprived of them;

– they are absolute in nature;

– they are held by the individual (police officer) for life (Article 269 of the Civil Code of Ukraine).

A key distinguishing feature of this category of subjective civil rights—personal non-property rights—is their intrinsic connection to the personality of the rights-holder. As some scholars rightly note, it is more accurate to refer to this feature as a "personalist character" rather than a "personal character," since not only personal non-property rights but also other rights (e.g., property rights) held by individuals may be considered personal. This close connection between personal non-property rights and the authorized person determines the legal particularities of their origin, termination, exercise, and disposition. These legal consequences of the personalist nature of such rights are reflected in Article 269 of the Civil Code of Ukraine: they arise from the moment of birth of a natural person, and in certain cases, on the basis of the law; a natural person cannot renounce personal non-property rights or be deprived of them and retains them for life (Hora, 2014).

An analysis of Book 2 of the Civil Code of Ukraine, *Personal Non-Property Rights of a Natural Person*, allows for the identification of those rights that ensure the social existence of an individual (Chapter 22 of the Civil Code of Ukraine). These include: the right to a name (Article 294), the right to change one's name (Article 295), the right to use one's name (Article 296), the right to respect for dignity and honor (Article 297), respect for a deceased individual (Article 298), the right to inviolability of business reputation (Article 299), the right to individuality (Article 300), the right to privacy and its protection (Article 301), the right to information (Article 302), the right to personal documents (Article 303), the right to manage personal documents (Article 304), the right to access personal documents transferred to libraries or archives (Article 305), the right to confidentiality of correspondence (Article 306), protection of personal interests during photo, film, television, and video recording (Article 307), the right to protection of personal interests in photographs and other artistic works,

or the right to one's image (Article 308), the right to freedom of literary, artistic, scientific, and technical creativity (Article 309), the right to residence (Article 310), the right to inviolability of the home (Article 311), the right to choose one's occupation (Article 312), the right to freedom of movement (Article 313), the right to freedom of association (Article 314), and the right to peaceful assembly (Article 315).

Thus, personal non-property rights vested in an individual constitute a component of the system of subjective rights and represent a tangible social phenomenon. These rights are not abstract; their classification encompasses a wide array of nuanced relationships and plays a key role in the regulation and guarantees of personal human rights. The Civil Code of Ukraine defines not only the range of social relations governed by civil law but also particular types of personal non-property rights. In doing so, it provides a legal foundation for the concretization and classification of personal non-property (intangible) rights (Chornoochenko, 2000).

3. Personal Non-Property Rights as a Legal Form of Social Relations

Personal non-property rights, which are the subject of this study, constitute a legal form of social relations arising from the possession of intangible benefits by an individual and serve as a legal mechanism ensuring their social existence. These benefits form an integral part of a person's social life, as they enable an individual to be a full-fledged member of society and are predominantly realized within the sphere of spiritual communication.

One such right is the right to a name, which entails the legally established possibility for a person to have a name, change it, use it, permit or prohibit its use by others, as well as demand its correct usage and prevent its distortion when addressing the holder of the respective right (Korchevna, 1998). Another example is the right to respect for honor and dignity, understood as the legally guaranteed possibility for an individual to require that the perception of their personality, activities, and actions by other subjects be based exclusively on accurate facts, without distortion of information or dissemination of false data. The concept of honor encompasses the societal evaluation of an individual's moral and ethical qualities, behavior, and social activities, reflecting the attitude toward them from their surroundings. Dignity, in turn, is understood as a person's internal awareness of their own value, grounded in their personal qualities, worldview, abilities, and social significance.

An example of a non-property right includes, in particular, the right to inviolability of business reputation and the right to individuality. The right to inviolability of business reputation is a legally guaranteed possibility for a person to demand from others an objective and impartial assessment of their professional, business, or other qualities. This right also entails protection against unlawful encroachments that may harm the formed perception of the person. A distinguishing feature of this right is that its holder can be not only a natural person but also a legal entity, which differentiates it from the rights to respect for honor and dignity that belong exclusively to natural persons. The right to individuality means the legally established possibility for a natural person to maintain or change their national, cultural, linguistic, and religious identity, as well as freely choose forms and means of self-expression, provided these do not contradict current legislation or violate generally recognized moral and ethical norms of society (Dzera, 2001).

The right to access personal documents transferred to library or archival collections, stipulated by Article 305 of the Civil Code of Ukraine, by its legal nature is a personal non-property right of a natural person, which ensures the possibility of exercising certain actions to access private information contained in the respective collections. The content of this right lies in obtaining information that may be of public interest and possess scientific, historical, or cultural value. Its exercise aims to balance the public interest in access to significant data with the necessity of respecting the individual's right to privacy, which may be threatened by disclosure of confidential or sensitive information.

Also noteworthy is the right to confidentiality of correspondence, which encompasses guarantees of inviolability of letters, telephone conversations, telegraphic, and other forms of communication conducted in the private sphere. This right ensures the preservation of confidentiality of private communication and belongs to the personal non-property rights aimed at protecting private life. By its content, it is closely related to the right to personal documents, since both institutes ensure protection of private information from unlawful interference by third parties (Bandurka, 2004). Interference with the right to confidentiality of correspondence is permitted only by court decision and solely in cases explicitly provided by law. Such restriction may be imposed to prevent the commission of a criminal offense or to establish the truth during a pre-trial investigation, provided that the necessary information cannot be obtained by other, less intrusive means. Such limitation of individual rights must comply with the principle

of proportionality and be implemented strictly within the limits established by legislation (Antoniuk, 2004).

In the modern world, the right to information is also an important non-property right. It refers to the legally guaranteed possibility for an individual to freely seek, receive, store, use, and disseminate information. Legally, information means data fixed on material carriers or officially published concerning events, facts, and phenomena occurring or having occurred in society, the state, or the natural environment. However, the exercise of this right is subject to certain restrictions. In particular, it does not extend to information constituting personal secrets, except in cases provided by law, state secrets, or confidential information belonging to legal entities.

Additionally, non-property rights include the right to freedom of literary, artistic, scientific, and technical creativity; the right to freedom of association; and the right to peaceful assembly, among others.

4. Conclusions

Thus, the personal non-property rights that ensure the social existence of a police officer in Ukraine belong to the category of exclusive rights. The content of these rights constitutes a set of entitlements vested in the individual as the holder of these rights. They encompass both a positive aspect—legal recognition of the individual's right to the corresponding intangible benefit (right of possession) and the ability to use it (right of use) within the limits established by law, in accordance with the purpose of such benefit and considering the police officer's personal interests—and a negative aspect, which is manifested in the right to demand that other subjects refrain from encroaching upon this benefit, thereby ensuring protection against violations.

The identified personal non-property rights ensure the social existence of the police officer and are characterized by the following features: personal nature, intangible character, a specific object, and orientation toward satisfying physical (biological), spiritual, moral, cultural, social, or other intangible needs (interests).

References

Antoniuk, O. I. (2004). *Pravo uchasnykiv tsyvilnykh pravovidnosyn na samozakhyst* [The right of participants in civil legal relations to self-defense] (Candidate's thesis). Kharkiv, Ukraine. (in Ukrainian)

Bandurka, O. M. (2004). *Teoriia i praktyka upravlinnia orhanamy vnutrishnikh sprav Ukrainy* [Theory and practice of management of internal affairs bodies of Ukraine]. Kharkiv, Ukraine: Vydavnytstvo Natsionalnoho universytetu vnutrishnikh sprav. (in Ukrainian)

Chornoochenko, S. I. (2000). *Osobysti nemainovi prava, yaki zabezpechuiut sotsialne isnuvannia fizychnykh osib v Ukraini* [Personal non-property rights that ensure the social existence of individuals in Ukraine] (Candidate's thesis). Kharkiv, Ukraine. (in Ukrainian)

Dzera, I. O. (2001). *Tsyvilno-pravovi zasoby zakhystu prava vlasnosti v Ukraini* [Civil legal means of protecting property rights in Ukraine] (Extended abstract of candidate's thesis). Kyiv, Ukraine. (in Ukrainian)

Hora, M. A. (2014). Poniattia ta oznaky osobystykh nemainovykh prav fizychnykh osib [Concept and characteristics of personal non-property rights of individuals]. *Pravova Derzhava*, (17), 61–66. (in Ukrainian)

Korchevna, L. O. (1998). *Kompensatsiia moralnoi shkody, zavdanoi porushenniam osobystykh nemainovykh prav u tsyvilnomu pravi Ukrainy* [Compensation for moral damage caused by violation of personal non-property rights in the civil law of Ukraine] (Candidate's thesis). Kharkiv, Ukraine. (in Ukrainian)

Sofiiuk, T. O. (2015). *Pravo fizychnoi osoby na oznaiomlennia z osobystymy paperamy, yaki peredani do fondu bibliotek abo arkhiviv* [The right of an individual to familiarize himself with personal papers transferred to the library or archive fund] (Candidate's thesis). Kyiv, Ukraine. (in Ukrainian)

Tsyvilnyi kodeks Ukrainy vid 16 sichnia 2003 r. № 435-IV [Civil Code of Ukraine dated January 16, 2003 No. 435-IV]. Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#top (in Ukrainian)

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ФОРМИ ЗАХИСТУ ОСОБИСТИХ НЕМАЙНОВИХ ПРАВ, ЩО ЗАБЕЗПЕЧУЮТЬ СОЦІАЛЬНЕ БУТТЯ ПОЛІЦЕЙСЬКОГО В УКРАЇНІ

Анотація. ***Метою*** статті є дослідження форм захисту особистих немайнових прав, що забезпечують соціальне буття поліцейського в Україні. ***Результати.*** У статті досліджено форми захисту особистих немайнових прав, що забезпечують соціальне буття поліцейського в Україні. Підкреслено актуальність обраної теми статті, визначено базові категорії. Встановлено, що захист особистих

немайнових прав – це юридично закріплена можливість уповноваженої особи використовувати заходи правоохоронного характеру з метою відновлення порушеного немайнового права та припинення дій, що його порушують. Формою захисту особистих немайнових прав фізичної особи, які забезпечують її соціальне буття, визнано передбачену законодавством систему взаємоузгоджених дій уповноважених на те органів або самої фізичної особи чиї права порушуються, спрямованих на поновлення таких прав, припинення правопорушення та забезпечення відшкодування завданих ним збитків. ***Висновки.*** Зроблено висновок, що до захисту особистих немайнових прав, які забезпечують соціальне буття поліцейського в Україні, можливе застосування як юрисдикційної, так і неюрисдикційної форм захисту. До юрисдикційної форми захисту особистих немайнових прав, які забезпечують соціальне буття поліцейського в Україні, слід зарахувати: судовий захист та адміністративний порядок захисту, а до неюрисдикційної форми – самозахист і нотаріальну форму захисту. Підкреслено, що нотаріальна форма захисту особистих немайнових прав, які забезпечують соціальне буття поліцейського в Україні, має превентивний (попереджувальний) характер, оскільки захищає права поліцейського від порушень у майбутньому (зокрема, це стосується таких прав, як сприяння зміцненню законності та правопорядку, забезпечення захисту й охорони важливих прав та інтересів поліцейського, а також запобігання можливим правопорушенням. Оскільки об'єкт захисту не підлягає повному відновленню, захист у такому разі необхідно спрямовувати переважно на попередження порушення особистого немайнового права, що забезпечує соціальне буття поліцейського в Україні.

Ключові слова: цивільно-правовий захист, форми захисту, юрисдикційна форма захисту, неюрисдикційна форма захисту, самозахист, судовий захист.

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THE LEGAL NATURE OF THE ECTHR CASE LAW AS A SOURCE OF LAND LAW IN UKRAINE

Abstract. ***Purpose.*** The study aims to analyze the concept of "case law of the European Court of Human Rights" and explore its legal nature as a source of land law in Ukraine. It also seeks to determine the place of the ECtHR case law in the hierarchy of sources of Ukrainian land law. ***Research Methods.*** The study employs general scientific and specialized methods of legal research. ***Results.*** Legislative approaches to defining the concept of "ECtHR case law" are analyzed. International experience in regulating the relevant issue, particularly some legal acts of the United Kingdom and Ireland, is examined. The study assesses the recognition of the European Commission of Human Rights' case law as a source of Ukrainian land law. Additionally, key doctrinal approaches regarding the legal nature of the ECtHR case law are identified. The author compares it with the classical precedent in English law. Based on legislative norms and works of Ukrainian legal scholars, conclusions are drawn about the place of the ECtHR case law in the system of land law sources. ***Conclusions.*** The legal force of the ECtHR case law as a source of Ukrainian land law is often diminished due to insufficient study of the relevant legal concept and a lack of understanding of its place in the hierarchy of legal sources. It is recommended to amend certain Ukrainian legal norms to explicitly define what constitutes "ECtHR case law" and to regulate the status of the European Commission of Human Rights' case law as a legal source. A comparison of the ECtHR case law with classical judicial precedent indicates that they share many common features, and the ECtHR case law can be considered as a special type of international precedent. The case law of the European Court of Human Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms form a unified whole and should not be analyzed separately when determining their place within the system of sources of Ukrainian land law.

Key words: case law of European Court of Human Rights, precedent, European Commission of Human Rights, sources of land law in Ukraine.

1. Introduction. Numerous problems with applying the case law of the European Court of Human Rights (hereinafter – "ECtHR", "the Court") to resolve land disputes, in particular, irrelevant and "ritualistic" references to case law, are primarily related to the insufficient theoretical study of this legal institution. Despite the legislative consolidation of the ECtHR case law as a source of law in Ukraine, questions often arise concerning the basic understanding of the concept of "ECtHR case law" and its legal nature. For example, the place of the ECtHR case law in the hierarchy of law sources in Ukraine and the rules for applying the ECtHR ruling in resolving land disputes in Ukraine, are debatable.

The issue concerned has been studied by such scholars as N. Blazhivska, T. O. Kovalenko, A. M. Ivanitskyi, R. B. Sabodash, D. V. Sannikov, M. Sannikova, and others.

The purpose of the present article is to analyze the legal nature of the case law of the European Court of Human Rights as a source of land law in Ukraine, compare it with the classical judicial precedent, and determine the place of the case law in the hierarchy of land law sources.

2.1. The concept of "ECtHR case law". A partial definition of the concept is provided by the Law of Ukraine "On the Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights". Pursuant to Article 17, courts refer both to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and the Protocols thereto (hereinafter referred to as the "ECHR" or "Convention") and the "case law of the Court" as a source of law. The Law also defines the concept of "case law of the Court" involving the case law of the European Court of Human Rights and the European Commission of Human Rights (The Law of Ukraine "On the Enforcement

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of Judgments and Application of the Case Law of the European Court of Human Rights").

In this context, a set of research concerns arise. For example, the Law does not define the concept of "case law of the European Court of Human Rights". According to Article 1 of the Law, it only defines a "judgment of the ECtHR". Part 2, Article 18 of the Law also marks that "to refer to the Court's judgments and rulings and the Commission's rulings, courts shall use translations of the texts of the Court's judgments and the Commission's rulings" (The Law of Ukraine "On the Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights"). Accordingly, it can be assumed that the legislator implied the Court's judgments and rulings in the concept of "ECtHR case law". At the same time, according to Art. 47 of the Convention, the Court, at the request of the Committee of Ministers, give advisory opinions on the legal questions concerning the interpretation of the Convention (Convention for the Protection of Human Rights and Fundamental Freedoms).

If we analyze international experience, the Human Rights Act 1998, adopted by the British Parliament to harmonize the Convention and the local legal system, foresaw such a situation. Thus, Art. 2 states: "A court or tribunal determining a question which has arisen in connection with a Convention right must take into account any (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights (...)" (Human Rights Act, 1998). The British Parliament enshrined a list of decisions, judgments, or other documents, including advisory opinions adopted by the ECtHR, which should be taken into account by the court in resolving disputes concerning the rights provided for in the Convention. A similar provision is evident in the Irish European Convention on Human Rights Act 2003 (Art. 4) (European Convention on Human Rights Act, 2003).

2.2. The case law of the European Commission of Human Rights. The case law of the European Commission of Human Rights (hereinafter – the "Commission") raises further questions. The Commission operated from 1954 to 1998 and carried out preliminary consideration of complaints about violations of the Convention. As a result of the 1998 reform, the Commission effectively ceased to exercise its powers.

As noted above, the Law provides that the "case law of the Court" includes the case law of the European Commission of Human Rights. At the same time, procedural codes no longer provide for the Commission's case law as a source of law (Civil Procedure Code of Ukraine).

Consequently, a conflict arises because different legal acts of equal legal force differently regulate the sources of law to be applied in Ukraine to resolve land disputes. To address the mentioned problem, the rule of using a newer legal act to resolve a conflict can be applied. In such circumstances, the Civil Procedure Code, which does not provide that the Commission's case law may be applied by courts to resolve land disputes, should be employed to resolve the issue of relevant sources.

At the same time, following the prompt of the European Commission of Human Rights, the Unified State Register of Court Decisions currently contains more than a thousand court decisions in cases considered by appellate and cassation courts in civil and commercial proceedings related to land issues. Based on the analysis of more than a hundred decisions, it is evident that in most cases the Commission is mentioned exclusively in the context of Art. 17 or 18 of the Law (provisions regulating the use of ECtHR case law as a source of law). In these judgments, the courts continued referring to the ECtHR case law rather than the Commission's. However, the court referred to the Commission's case law in about fifteen court decisions. In all cases, judges refer to the judgment in the case of "Leo Zand v. Austria" (application no. 7360/76, report of the European Commission of Human Rights of October 12, 1978). Such court decisions include the Resolution of the Civil Court of Cassation of the Supreme Court of Ukraine of October 26, 2020, case No. 700/1068/16-ц; the Resolution of the Supreme Court of Ukraine of November 28, 2018, case No. 536/158/16-ц; the Resolution of the Civil Court of Cassation of the Supreme Court of Ukraine of December 18, 2019, case No. 296/3876/19.

The text of all references is almost identical: " 'court established by law' in Article 6, paragraph 1, of the Convention means "the entire organizational structure of the courts, including [...] matters within the jurisdiction of certain categories of courts [...]" (Resolution of the Civil Court of Cassation of the Supreme Court in case No. 296/3876/19, 2019).

In all the above cases, the reference to the Commission's case law is driven by the judgment in the case "Sokurenko and Strygun v. Ukraine" considered by the ECtHR (para. 24 of the judgment of July 20, 2006), which also cited this Commission's decision (Case of Sokurenko and Strygun v. Ukraine, 2006).

As a result, it can be concluded that although the Law regards the Commission's practice as

a source of land law, courts usually either do not refer to it at all or do so by citing references to the Commission's conclusions made within ECtHR judgments. Another problem is the heterogeneity of legislation on whether the Commission's decisions are a source of law.

The above analysis shows that Ukrainian legislation is ambiguous as to what constitutes "Court case law" and "ECtHR case law". The legislative branch should regulate this issue to establish when particular judgments can be applied and when they cannot, otherwise it will be resolved in practice ad hoc.

3. The ECtHR case law – recommendation or precedent? Although the concepts of "case law of the Court" and "ECtHR case law" are ambiguous, they still give us a sufficient understanding that allows for applying ECtHR judgments in practice when resolving land disputes, and the establishment of the legal nature of the ECtHR case law is a more complex issue.

Although the CAP of Ukraine stipulates that domestic courts shall follow the rule of law given the Court's case law, this still does not indicate the exclusively recommendatory nature of the case law (Code of Administrative Procedure of Ukraine). This does not negate a significant set of other legal provisions that directly provide for the ECtHR case law as a source of land law.

Thus, it can be unequivocally stated that the ECtHR case law is a source of land law in Ukraine. However, can these judgments be applied as a kind of international precedent? Opponents of the ECtHR case law as precedent often argue that the Ukrainian legal system is not characterized by judicial precedent, and the precedential force of decisions of a supranational judicial body is impossible.

In order to analyze the relevant issue, it is necessary to first clarify the content of judicial precedent in its classical sense. The doctrine of stare decisis is a cornerstone of common law, which essentially means that courts of limited jurisdiction must adhere to the rules established by courts of superior jurisdiction (Pattinson, S. D.). The system of Ukrainian land law and judicial precedents are usually perceived as categories from different legal worlds, but the practice of land dispute resolution and some legal acts demonstrate that some precedent-setting features are characteristic of Ukrainian court decisions and land legislation.

3.1. Ratio decidendi in the ECtHR case law. For further analysis, it is necessary to specify the characteristic features of classical judicial precedents. Usually, the key element of judicial precedents is ratio decidendi – reasoning that is the basis for a court decision and is binding on courts of limited jurisdiction.

In ECtHR judgments, some rationes decidendi could be analogous to the ratio decidendi of common law. Although the Court makes decisions based on the provisions of the Convention, it often interprets it so broadly that it creates new rules of conduct for states that must take them into account to avoid potential disputes in the ECtHR (Sabodash R.B., 2013, p. 141). An example of such a broad interpretation is the criteria for the legality of interference with land ownership. Protocol 1 to the Convention stipulates that such interference must be carried out in accordance with the law and exclusively in the public interest (Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, 1952). Based on these rather general rules, the Court then developed a set of requirements that must be met in order to comply with the principle of legality and also provided numerous criteria for the proportionality of interference with a person's property right, including land, i.e., the need to balance the interests of society and the owner (Case of Sporrong and Lonnroth v. Sweden, 1982). It also enshrined that the principle of legality includes "the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application" (Case of Lekic v. Slovenia, 2017). The same legal reason was cited in the case of Zelenchuk and Tsytsyura v. Ukraine, 2018 (Case of Zelenchuk and Tsytsyura v. Ukraine, 2018).

The relevant legal rules are often mentioned in other judgments and are well-established. In its judgments, the Court frequently separates them into the category of "general principles", emphasizing the stability of such rules. Therefore, we can conclude that even though the Convention's provisions are general, the Court forms case law within its law-making.

As for the ECtHR, it has repeatedly commented the nature of its case law. Thus, in the case of Cossey v. the United Kingdom, the court noted that the ECtHR is not obliged to follow its previous legal rules. At the same time, the Court emphasized "it usually follows and applies its own precedents, such a course being in the interests of legal certainty and the orderly development of the Convention case-law" (Case of Cossey v. the United Kingdom, 1990). Accordingly, the Court considers its decisions as precedents.

3.2. Hierarchy of courts. An auxiliary characteristic feature of precedents is the binding nature of legal rules for courts of lower jurisdiction. For example, British lawyers Rupert Cross and J. Harris note: "Every court is bound

to follow any case decided by a court above it in the hierarchy and appellate courts (other than the House of Lords) are bound by their previous decisions (Cross R., Harris J.W, 1991). Such hierarchy is much more difficult to prove in the case of the ECtHR, which is a supranational international judicial institution.

If we analyze the national judicial hierarchy, we can conclude that some procedural norms of Ukrainian legislation still show precedent features of domestic judicial practice. For example, part 5 of Art. 13 of the Law of Ukraine "On the Judiciary and the Status of Judges" stipulates that the Supreme Court's conclusions on the application of law rules are binding on power entities who use them in their activities. The next part of the same article states that the conclusions of the Supreme Court are "taken into account" by other courts when applying these rules of law (The Law of Ukraine "On the judicial system and the status of judges"). However, an obligation to "take into account" legal conclusions is not an obligation to use them and resolve land disputes in the same way as the Supreme Court did.

Comparing the English and French legal systems, Rupert Cross pointed out that "case law is not a source of law in France because a judge is not obliged to consider it when coming to a decision". He also believed that in almost any jurisdiction, judges are inclined to resolve particular disputes in the same way as another judge did in a similar case. But there is a significant difference in the degree of obligation to act in this way: to voluntarily adhere to the agreed approach or consider it as part of their responsibilities (Cross R., Harris J.W, 1991).

Given the above-mentioned norms of the Law of Ukraine "On the Judiciary and the Status of Judges", one may state that Ukrainian courts have a positive obligation to take into account the position of the Supreme Court on some legal rules when resolving land disputes. Moreover, the procedural codes of Ukraine also enshrine the mechanism of so-called "cassation filters". Thus, part 2 of Art. 389 of the CPC of Ukraine provides for restrictions on the grounds for cassation appeal of court decisions, which narrow down such an option to cases when:

– a court of appeal applied a legal rule without considering the Supreme Court's position on the application of the rule of law in such legal relations;

– a complainant substantiated the need to derogate from the conclusion on the application of the rule of law in such legal relations, which was set out in the resolution of the Supreme Court;

– the Supreme Court's conclusion on the application of a legal norm in such legal relations is currently absent (Civil Procedure Code of Ukraine).

Although lower court judges just "take into account" the conclusions of the Supreme Court because of legislative norms, cassation filters make them significantly reduce the options of canceling their decisions in the courts of cassation by relying on the legal conclusions of the Supreme Court.

As for the ECtHR "hierarchy, as mentioned above, it is more difficult for supranational judicial institutions to build a direct judicial hierarchy with a national judicial system, but procedural codes also provide that already resolved land disputes can be reviewed by the court under exceptional circumstances. For example, according to para. 2, part 3, Art. 423 of the CPC of Ukraine, courts review court decisions under exceptional circumstances in the event that an international judicial institution whose jurisdiction is recognized by Ukraine (in fact, the ECtHR) establishes a violation by Ukraine of international obligations in resolving a particular case by the court (Civil Procedure Code of Ukraine).

Thus, the Ukrainian legislator assumes that the opinion of the international judicial institution (the Court) is a sound argument to review the court decision, which has already entered into force and was made by the national judicial system, which indicates a certain hierarchical significance of the ECtHR. Moreover, the above rules on the use of ECtHR case law as a source of land law by courts in resolving land disputes emphasize the mandatory use by courts of the legal rules and their hierarchical superiority, since domestic courts would not have to use someone's conclusions as a source of law if they were lower in the hierarchy than these courts. As a result, it can be argued that the Ukrainian national judicial system is characterized by a certain precedent hierarchy, and the ECtHR judgments have a corresponding significance. At the same time, it is worth emphasizing that it is Art. 17 of the Law, which provides for the ECtHR case law as a source of land law as, for example, in Ireland or the United Kingdom, their acts claim that local courts must "take into account" the ECtHR case law when resolving disputes (Human Rights Act, 1998; European Convention on Human Rights Act, 2003). The Convention itself does not stipulate that the case law of the Court should be a source of law in the Contracting States (Yurchyshyn V.D., 2012, p. 49).

3.3. Option of changing the rules of law. In addition, the English judicial precedent also

allows the court to change the established rules of law under some circumstances (for example, a discrepancy in the factual circumstances of the case). Thus, such an option in the ECtHR case law cannot contradict the idea that it is a form of precedent. According to scientist Sabodash R.B., a departure from previous precedents is usually "followed by an open discussion in the Court about the reasons for abolishing judicial practice" (Sabodash R.B., 2013, pp. 143-144). Moreover, no matter how much lawyers strive to maintain the uniformity of legal conclusions and the stability of the legal system as a whole but the modification of some legal rules under the influence of time is inevitable – otherwise, lawyers would now use the "Code" of Hammurabi to resolve land disputes.

In support of the above view, it is essential to draw attention to the words of former ECtHR judge Christos Rozakis that the text of the Convention requires the specification of its concepts, and the fleeting situation in the world requires that these concepts be specified in such a way as to be acceptable to European societies at the moment (Rozakis C., 2009, p.2).

As for the standpoint of domestic scientists, they approach the ECtHR case law as a precedent differently. Thus, in T.O. Kovalenko's opinion, the ECtHR case law is an interpretative legal precedent, which should be understood as an official explanation of the legal norm that becomes generally binding upon its further application (Kovalenko, 2016, pp. 83-84). In his contribution, Sabodash R.B. came to a similar conclusion that the ECtHR case law is a "special form of precedent", which is created by a supranational judicial body and is binding on the ECtHR itself and the Contracting Parties to the Convention (Sabodash R.B., 2013, p. 144). At the same time, Ivanytskyi A.M. does not agree that the ECtHR case law is a classic precedent and believes that it is the only source of dynamic interpretation of the Convention, which is a new type of law source that does not fall under the classical classification (Ivanytskyi, 2020, p. 26).

In view of all the above, it can be concluded that the ECtHR case law is a form of common law arising while interpreting the Convention and leads to the creation of new rules regulating land legal relations, which are at least taken into account by the national courts of other states when resolving land disputes, and sometimes directly considered as sources of law.

4. Place of the ECtHR case law in the hierarchy of land law sources. The lack of a well-defined place of the ECtHR case law in the hierarchy of land law sources significantly devalues its value, as it is impossible to get it straight whether the ECtHR legal rule can gain a legal advantage over a rule contained, for example, in a by-law that does not comply with the principles provided for by the Convention.

To determine the place of the ECtHR case law within the system of sources of land law, it is necessary to refer to the legislation. In the context of land law sources, the Land Code of Ukraine is limited to a general phrase in part 1 of Art. 3: "land relations are regulated by the Constitution of Ukraine, this Code, as well as the regulations adopted in accordance with them" (Land Code of Ukraine).

Pursuant to Article 9 of the Constitution of Ukraine, international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine (Constitution of Ukraine). The Civil Code of Ukraine establishes that if the current international treaty provides for rules other than those provided for by an act of civil law, the rules of the international treaty of Ukraine (Civil Code of Ukraine) shall apply. Moreover, part 8 of Art. 10 of the CPC of Ukraine notes that "in case of inconsistency of a legal act with an international treaty, the consent to be bound by which was given by the Verkhovna Rada of Ukraine, the court shall apply the international treaty of Ukraine" (Civil Procedure Code of Ukraine).

Accordingly, it can be argued that the legislation adheres to the concept of the rule of international law over national law. Given the above, we can say that although the Convention often contains fairly general rights in its description, in the event of a conflict between the requirements of national law or regulations and the rights provided for by the Convention, priority shall be given to the Convention in resolving land disputes.

If the Convention's legal force is more understandable, the issue of the ECtHR case law in the hierarchy raises questions. The legislation does not establish a direct similar rule on the ECtHR, which would provide for the application of the Court's case law if national legislation contradicts the legal positions of the European Court of Human Rights.

At the same time, a similar conclusion can be reached if the issues are analyzed more comprehensively. The Convention and the ECtHR case law are inseparable. The Court interprets the Convention's provisions and often develops and improves them. As pointed out by Yurchyshyn V.D., the ECtHR case law in the hierarchy of legislation is next after international treaties (Yurchyshyn V.D., 2012, p. 52). A similar conclusion was reached by Ivanytskyi A.M., who pointed out that

the ECtHR case law should be perceived as a source of law applied in conjunction with the Convention since they constitute a "holistic" living organism (Ivanytskyi, 2020, p. 27).

Relying on the findings of the above analysis and opinions of the Ukrainian scientists, it should be recognized that the ECtHR case law and the Convention are parts of one whole and cannot be considered separately from each other, and therefore have the same legal force as a source of land law.

Conclusions. Ukrainian legislation currently imperfectly regulates the definitions of "Court case law" and "ECtHR case law". Approaches of some other states in this regard seem to be better and can be borrowed. The case law of the Commission deserves special attention because it is considered differently by different legal acts as a source of land law, which also needs to be clarified at the legislative level.

Being a form of precedent, the established ECtHR case law is an organic extension of the Convention and, therefore, it is placed high in the hierarchy of sources of land law in Ukraine. At the same time, poor theoretical study of the relevant issue leads to frequent depreciation of the importance of this source of land law. It should be recognized that the Convention's norms and the legal rule of the ECtHR case law are general enough, which is probably a contributory cause for the devaluation of the importance of the relevant source of land law. At the same time, human rights and freedoms determine the content and focus of the State's activities. Thus, if any special land law norms contradict the fundamental principles of the Ukrainian State and European standards of human rights, they should be brought into line with such principles and standards, and the rights of subjects of land relations – protected.

References:

Case of Cossey v. the United Kingdom (European Court of Human Rights September 27, 1990). Retrieved from https://hudoc.echr.coe.int/ukr?i=001-57641.

Case of Lekic v. Slovenia (European Court of Human Rights February 14, 2017). Retrieved from https://hudoc.echr.coe.int/eng?i=001-171087.

Case of Sporrong and Lonnroth v.s Sweden (European Court of Human Rights September 23, 1982). Retrieved from https://hudoc.echr.coe.int/eng?i=001-57580.

European Convention on Human Rights Act 2003. Retrieved from https://www.irishstatutebook.ie/eli/2003/act/20/enacted/en/pdf.

Human Rights Act 1998. Retrieved from https://www.legislation.gov.uk/ukpga/1998/42/contents.

Ivanytskyi A., (2020). Znachennya praktyky Yevropeys'koho sudu z prav lyudyny dlya vdoskonalennya natsional'noho tsyvil'noho zakonodavstva Ukrayiny [The significance of the practice of the European Court of Human Rights for the improvement of the national civil legislation of Ukraine]. Pidpryyemstvo, hospodarstvo i pravo – Entrepreneurship, Economy and Law, #6, 24. Retrieved from https://doi.org/10.32849/2663-5313/2020.6.05 [in Ukrainian].

Kodeks administratyvnoho sudochynstva Ukrayiny [Code of Administrative Procedure of Ukraine]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15 [in Ukrainian].

Konstytutsiya Ukrayiny [Constitution of Ukraine]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр [in Ukrainian].

Konventsiya pro zakhyst prav lyudyny i osnovopolozhnykh svobod [Convention for the Protection of Human Rights and Fundamental Freedoms]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/995_004 [in Ukrainian].

Kovalenko T. Praktyka Yevropeys'koho sudu z prav lyudyny yak dzherelo zemel'noho prava Ukrayiny [The practice of the European Court of Human Rights as a source of land law in Ukraine]. Yurydychna Ukrayina – Legal Ukraine, #11-12. pp – 82-88. Retrieved from http://nbuv.gov.ua/UJRN/urykr_2016_11-12_13 [in Ukrainian].

Pattinson, S. D. (2015). The Human Rights Act and the Doctrine of Precedent. Legal Studies, 35(1), 142-164.

Postanova Kasatsiynoho tsyvil'noho sudu Verkhovnoho Sudu vid 18 hrudnya 2019 roku u spravi № 296/3876/19 [Resolution of the Civil Court of Cassation of the Supreme Court of December 18, 2019 in case No. 296/3876/19]. Retrieved from https://reyestr.court.gov.ua/Review/86565462 [in Ukrainian].

Protokol do Konventsiyi pro zakhyst prav lyudyny i osnovopolozhnykh svobod [Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/994_535 [in Ukrainian].

Protokol N 11, yakyy peredbachaye perebudovu kontrol'noho mekhanizmu, stvorenoho Konventsiyeyu pro zakhyst prav i osnovnykh svobod lyudyny [Protocol No. 11, which provides for the restructuring of the control mechanism established by the Convention for the Protection of Human Rights and Fundamental Freedoms]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/994_536 [in Ukrainian].

Rozakis C., (2009). The Interaction between the European Court of Human Rights and the Other Courts. Retrieved from https://www.venice.coe.int/wccj/Papers/ECHR_Rozakis_E.pdf.

Sabodash R.B., (2013). Praktyka yevropeys'koho sudu z prav lyudyny yak dzherelo tsyvil'noho prava Ukrayiny [Practice of the European Court of Human Rights as a source of civil law of Ukraine].

Nashe pravo – Our Right, #9, pp. 140-145. Retrieved from http://nbuv.gov.ua/UJRN/Nashp_2013_9_27 [in Ukrainian].

Sir Cross R., Harris J.W (1991). Precedent in English Law (Clarendon Law Series).

Sprava "Sokurenko i Stryhun proty Ukrayiny" [Case of Sokurenko and Strygun v. Ukraine]. (European Court of Human Rights July 20, 2006). Retrieved from https://zakon.rada.gov.ua/laws/show/974_115 [in Ukrainian].

Sprava «Zelenchuk i Tsytsyura proty Ukrayiny» [Case of Zelenchuk and Tsytsyura v. Ukraine]. (European Court of Human Rights May 22, 2018). Retrieved from https://zakon.rada.gov.ua/laws/show/974_c79 [in Ukrainian].

Tsyvil'nyy kodeks Ukrayiny [Civil Code of Ukraine]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/435-15 [in Ukrainian].

Tsyvil'nyy protsesual'nyy kodeks Ukrayiny [Civil Procedure Code of Ukraine]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/1618-15 [in Ukrainian].

Yurchyshyn V.D. (2012). Praktyka Yevropeys'koho sudu z prav lyudyny yak dzherelo prava: koliziyi u natsional'nomu zakonodavstvi ta shlyakhy yikh vyrishennya [Practice of the European Court of Human Rights as a source of law: conflicts in national legislation and ways of their resolution]. Naukovi pratsi Natsional'noho universytetu "Odes'ka yurydychna akademiya – Scientific works of the National University "Odesa Law Academy", #11. pp. 47-55. Retrieved from http://nbuv.gov.ua/UJRN/Nponyua_2012_11_8 [in Ukrainian]

Zakon Ukrainy "Pro sudoustriy i status suddiv" [The Law of Ukraine "On the judicial system and the status of judges"]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19 [in Ukrainian].

Zakon Ukrainy "Pro vykonannya rishen' ta zastosuvannya praktyky Yevropeys'koho sudu z prav lyudyny" [The Law of Ukraine "On the Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights"]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/3477-15 [in Ukrainian].

Zemel'nyy kodeks Ukrayiny [Land Code of Ukraine]. (n.d.). zakon.rada.gov.ua. Retrieved from https://zakon.rada.gov.ua/laws/show/2768-14 [in Ukrainian].

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ПРАВОВА ПРИРОДА ПРАКТИКИ ЄСПЛ ЯК ДЖЕРЕЛА ЗЕМЕЛЬНОГО ПРАВА УКРАЇНИ

Анотація. ***Мета.*** Аналіз поняття "практика Європейського суду з прав людини", дослідження правової природи практики ЄСПЛ як джерела земельного права України. Визначення місця практики Європейського суду з прав людини у ієрархії джерел земельного права України. ***Методи дослідження.*** Робота виконана із використанням загальнонаукових та спеціальних методів наукового пізнання. ***Результати.*** Проаналізовані законодавчі підходи до визначення поняття "практика ЄСПЛ". Досліджено міжнародний досвід щодо врегулювання цього питання, зокрема певні нормативно-правові акти Великої Британії та Ірландії. Здійснено аналіз ситуації, що стосується визнання практики Європейської комісії з прав людини як джерела земельного права України. Також встановлено основні доктринальні підходи, які стосуються правової природи практики ЄСПЛ. Здійснено порівняння із класичним англійським судовим прецедентом. На підставі законодавчих норм, а також праць вітчизняних теоретиків права здійснені висновки щодо місця практики ЄСПЛ у системі джерел земельного права. ***Висновки.*** Юридична сила практики ЄСПЛ як джерела земельного права України часто нівелюється у зв'язку із недостатнім вивченням цього правового інституту, а також нерозумінням його місця у ієрархії джерел права. Рекомендується внести зміни в певні норми українського законодавства, щоб більш чітко передбачити, що саме є "практикою ЄСПЛ", а також врегулювати питання практики Європейської комісії з прав людини як джерела права. Порівняння практики ЄСПЛ із класичним судовим прецедентом свідчить, що у них є багато спільних рис і практику Суду можна розглядати як особливий вид міжнародного прецеденту. Практика Європейського суду з прав людини та Конвенція про захист прав людини і основоположних свобод є частиною одного цілого, а тому не можуть розглядати окремо при аналізі їхнього місця в системі джерел земельного права України.

Ключові слова: практика Європейського суду з прав людини, прецедент, Європейська комісія з прав людини, джерела земельного права в Україні.

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TYPES OF GUARANTEES FOR ENSURING EQUAL RIGHTS AND OPPORTUNITIES FOR CITIZENS IN THE FIELD OF PHYSICAL CULTURE AND SPORTS

Abstract. ***Purpose.*** The purpose of this article is to identify and characterize the types of guarantees that ensure equal rights and opportunities for citizens in the field of physical culture and sports. ***Results.*** The author presents a comprehensive legal and scientific analysis of the guarantees for ensuring equal rights and opportunities for citizens in the field of physical culture and sports, revealing their legal nature, implementation features, and classification. Special attention is paid to the analysis of current Ukrainian legislation and international legal instruments that establish fundamental standards of equality in sports activities. The study examines conceptual approaches to understanding equality guarantees in the sports sphere through the lens of constitutional principles, international legal standards, and administrative legal regulation. The author presents various scholarly perspectives on the subject and conducts a theoretical and legal analysis thereof. A classification of the types of guarantees for ensuring equal rights and opportunities in the field of physical culture and sports is proposed. Each type of guarantee is provided with a theoretical and legal characterization. International legal guarantees derive from treaties and instruments ratified by Ukraine, which obligate the state to implement international standards into national legislation and practice. Such guarantees contribute to the formation of a unified international standard of equal opportunities in the sphere of sports and physical culture. ***Conclusions.*** The study concludes that guarantees of equal rights and opportunities in the field of physical culture and sports represent a multidimensional system that combines general social prerequisites with specific legal instruments aimed at ensuring the effective operation of the principle of equality in this domain. The effectiveness of this mechanism depends directly on its normative clarity, institutional capacity, and the specifics of legal enforcement, all of which ensure both the formal declaration and the actual implementation of equality in public life. Thus, the research confirms that equality in the field of physical culture is not only a legal principle but also a social standard that must be ensured through a system of diverse guarantees.

Key words: physical culture, sports, guarantees, equal opportunities, legal equality, administrative and legal mechanism, legal regulation, administrative law.

1. Introduction

As rightly emphasized in specialized legal literature, "guarantees of human rights" encompass both general instruments and institutions that enable the practical realization, protection, and enforcement of those rights, as well as specific legal mechanisms that operate at both national and international levels. The former include political, social, economic, cultural, and other general preconditions for the effective exercise and protection of human rights, while the latter refer to a set of legal means or an integrated legal mechanism that allows every person to freely and fully realize and defend their rights. The primary purpose of legal guarantees is to ensure the maximum support for the exercise and protection of human rights and freedoms through legal means (Onishchenko, Suniehin, Kleshchenko, 2024).

In the context of physical culture and sports, the division of guarantees is particularly relevant, since, despite the existence of general conditions of equality, actual access to sports resources may be limited by flaws in legal regulation, the absence of effective enforcement mechanisms, or insufficient institutional support. A key component of specialized legal guarantees is an effective system of administrative oversight, which should include mechanisms for regular monitoring, reporting, and accountability for

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non-compliance with established equality standards.

2. Mechanism for Ensuring Equality of Human Rights

O.P. Vasylchenko, in her research on mechanisms for ensuring equality of human rights, emphasized the need to view such mechanisms through the lens of guarantees, as they directly establish legal provisions that form the foundation for implementing the principle of equality (Vasylchenko, 2023). From this perspective, guarantees are not merely auxiliary tools of law enforcement but are foundational elements of the equality assurance mechanism. They determine how legal provisions are applied in practice, what monitoring and control mechanisms are used to ensure compliance, and what legal remedies are available in cases of rights violations in the sports sector.

Sport is not only a means of physical development but also a powerful social instrument that fosters social cohesion and inclusiveness. Therefore, the provision of equal rights in this sphere has a direct impact on social stability and legal certainty, which requires a comprehensive approach to the formation of corresponding guarantees.

As I.S. Sakharuk rightly points out, the principle of equality is aimed at ensuring that everyone has the same volume of rights (formal equality), while the principle of non-discrimination is focused on guaranteeing equal access to these rights and eliminating any barriers to achieving substantive equality (Sakharuk, 2017). The principle of equality, as a fundamental constitutional principle, does not always ensure equal access to opportunities in real life, since legal equality does not guarantee the absence of socio-economic, physical, or cultural barriers that may hinder the exercise of these rights. That is why the principle of non-discrimination is so important—it focuses on removing obstacles that restrict access for certain social groups to physical culture and sports, including persons with disabilities, women, children from low-income families, and members of ethnic minorities. Therefore, administrative and legal guarantees of equality in the field of physical culture and sports must be comprehensive, integrating both legal and socio-economic mechanisms to ensure equal access. Only a combination of formal recognition of equal rights with effective government programs aimed at removing objective obstacles to participation in sports can guarantee real equality of opportunity for all citizens.

The European Sports Charter proclaims that, in order to promote sport as an important factor in human development, governments must take the necessary measures to:

1. enable every individual to engage in sport and, in particular, ensure that all young people have the opportunity to receive physical education and acquire basic physical skills; ensure the possibility to participate in sport and physical activity in conditions that are safe for health; guarantee that everyone who shows interest and ability has the opportunity to improve their performance in sport;

2. protect and develop the moral and ethical foundations of sport, human dignity and safety, and provide safeguards for athletes from exploitation for political, commercial, or financial gain (European Sports Charter, 1992).

Based on the provisions of the European Sports Charter cited above, it can be concluded that it emphasizes the need for a comprehensive approach encompassing both material and technical aspects (such as the creation of infrastructure, access to sports education, and guarantees of safe conditions) as well as moral and ethical principles governing this field. In our opinion, these guarantees can be conventionally divided into four main categories:

1. **Socio-economic guarantees** – state obligations to ensure that every citizen has the opportunity to participate in sports regardless of their social or material status. These guarantees are aimed at the development of sports infrastructure, funding of sports programs, and support for socially vulnerable population groups;

2. **Educational and cultural guarantees** – provisions that establish the obligation of physical education and sports training as an important component of personal development. This approach includes the integration of sports into educational curricula, support for coaching initiatives, and the dissemination of knowledge about a healthy lifestyle;

3. **Legal and safety guarantees** – mechanisms aimed at protecting the rights of athletes and ensuring safe conditions for physical activity. This includes medical control regulations, anti-doping policies, injury prevention measures, and legal protection from the exploitation of athletes for political or commercial purposes;

4. **Ethical guarantees** – principles aimed at preserving human dignity, fairness in sport, and preventing corruption and discriminatory practices. These include codes of conduct, mechanisms to combat manipulation of sports results, and measures to promote fair play.

In turn, I.Y. Mahnovskyi sees the need to classify procedural guarantees as a separate subgroup within the system of regulatory and legal guarantees, based on the division of legal norms into substantive and procedural. The scholar argues that by enshrining substantive guarantees in the relevant legal provisions—normative prescriptions aimed at creating favorable legal conditions for the effective exercise of rights and freedoms by each individual—the state simultaneously

defines specific forms and mechanisms for their implementation and protection, which are established in procedural norms. In this way, procedural guarantees for the realization and protection of rights and freedoms are formed (Mahnovskyi, 2003).

With regard to ensuring equal rights and opportunities in the field of physical culture and sports, the distinction between substantive and procedural guarantees is crucial for building an effective administrative and legal mechanism. Substantive guarantees create general legal conditions for the realization of equality by defining the rights, duties, and responsibilities of the actors involved in the sports sector, while procedural guarantees serve as tools for their implementation, providing clear mechanisms for law enforcement, appeal of violations, and legal protection.

A.O. Polianskyi, in his classification of guarantees of material support for athletes, identifies the following: the right to remuneration; annual and additional leave; social and living support; and pension provision. In the scholar's view, it is also appropriate to include material and moral forms of support among these guarantees, since work motivation in general—and for athletes in particular—manifests through legal, socio-economic, and morally oriented aspects (Polianskyi, 2015). This allows us to affirm that guarantees of material support for athletes are an integral part of the social protection system in the field of physical culture and sports. They create the basic conditions for athletes' professional activity, physical and psychological resilience, and contribute to the achievement of high athletic performance. In the context of administrative and legal regulation, these guarantees should be regarded as part of a broader system of social security, which must be integrated with state policies for sports support, mechanisms for athlete motivation, and social protection programs.

3. Guarantees for Ensuring Equal Rights and Opportunities of Citizens in the Field of Physical Culture and Sports

Thus, the types of guarantees for ensuring equal rights and opportunities of citizens in the field of physical culture and sports include the following:

1. constitutional and legal guarantees;
2. administrative and legal guarantees;
3. procedural and legal guarantees;
4. socio-economic guarantees;
5. anti-discrimination guarantees;
6. international legal guarantees;
7. universal (humanitarian) guarantees.

Constitutional and legal guarantees refer to the fundamental protections enshrined in the Constitution of Ukraine, which establish equality of all citizens in access to physical culture and sports as a fundamental legal norm. These guarantees ensure protection against discrimination, equality before the law, and provide a basis for further concrete mechanisms of legal regulation in this area. For instance, Article 55, part 3 of the Constitution of Ukraine states that everyone has the right to seek protection of their rights through the Ukrainian Parliament Commissioner for Human Rights. Part 4 of the same article enshrines the right to appeal to international courts or relevant bodies of international organizations to which Ukraine is a party, provided that all domestic legal remedies have been exhausted. Meanwhile, part 5 guarantees the right of everyone to protect their rights and freedoms by all means not prohibited by law. In addition, Article 43 guarantees the right to work, which, in the context of this study, implies equal rights and opportunities for realizing one's professional potential in the field of sports and physical culture (Constitution of Ukraine, 1996).

Administrative and legal guarantees include the norms of administrative legislation and special legal acts that regulate the accessibility of sports facilities and services. This type of guarantee ensures the practical implementation of equal opportunities through the creation of effective administrative procedures and oversight by public authorities.

Procedural and legal guarantees are legal mechanisms that regulate the procedures for the realization and protection of citizens' rights in the field of sports, including procedures for filing complaints and appealing decisions made by public authorities or other entities. They ensure access to both judicial and non-judicial protection for individuals whose sports-related rights have been violated.

The influence of the judiciary in ensuring equality and addressing discrimination based on gender or gender identity is also conditioned by the wide range of powers granted to judges. Judges may initiate a review of the constitutionality of legislative provisions that exhibit discriminatory characteristics before a constitutional court; they are not required to wait for a specific normative act to ensure protection from discriminatory treatment that results in human rights violations; judges may issue decisions aimed at eliminating entrenched discriminatory practices and approaches; they can apply the language of international and regional human rights treaties in their rulings—even if such treaties have not been ratified—as persuasive, though not binding, sources of law. This increases the legitimacy of the court's decision in a given case. Judges may also directly apply constitutional provisions guaranteeing protection from discrimination and affirming equality, including gender equality, and refer to precedent set by international and regional judicial institutions to support their legal reasoning (Uvarova, Daineko, 2016).

In the field of physical culture and sports, the judiciary can contribute to removing barriers that hinder equal access to sports resources and opportunities. This is especially relevant in cases of gender discrimination, when women or other vulnerable groups face unequal access to sports education, professional opportunities, or funding. Given their broad authority, courts can oblige public authorities to eliminate discriminatory policies in the field of sports and amend administrative procedures that effectively restrict equal opportunities for citizens.

Socio-Economic Guarantees are aimed at establishing a system of social standards and economic support for physical culture and sports activities. These guarantees involve the creation of accessible physical culture and sports institutions, funding for sports development programs, and social protection for athletes, including financial compensation, social benefits, and pension provisions.

State social guarantees are mandatory for all public authorities, local self-government bodies, enterprises, institutions, and organizations, regardless of ownership form. Social guarantees are closely related to labor guarantees, as the emergence of such guarantees—such as wage payments and pensions—results from a person's entry into labor relations and sometimes overlaps with labor-related protections (Polianskyi, 2015).

Anti-Discrimination Guarantees provide for legal liability in cases of discrimination in the field of physical culture and sports based on any grounds, including gender, age, physical condition, ethnic origin, and others. Their main purpose is to create conditions for the equal participation of all population groups, ensuring fairness and the protection of human dignity.

The core idea of equality is not absolute but rather relative or formal equality of autonomous and free individuals based on shared legal, moral, and other social norms. From a moral perspective, formal equality is realized through the rule of reciprocity (treat others as one would like to be treated), which has a universal character and demands equal treatment of people regardless of their individual characteristics. Legal equality entails equal opportunities (rights and freedoms) and obligations for all. In contrast to factual equality, legal equality means equality before the law. The formation of the idea of equality in society and law has reflected and continues to reflect a variety of important factors, including historical, cultural, religious, economic, political, and other influences. At all times, and today as well, the content of the idea of equality, as well as the extent of freedom and justice it defines, determines the nature of law (Bokalo, 2014).

International Legal Guarantees originate from international treaties and instruments ratified by Ukraine, which oblige the state to implement international standards into national legislation and practice. These types of guarantees promote the development of a unified international standard for equal opportunities in sports and physical culture.

In Western culture, the idea of equality emerged during antiquity and gradually evolved over centuries, but only in the 20th century did the conditions arise for its recognition at the international level. A specific feature of international law is that its norms are created by the coordination of positions among various states—no single country can independently create norms of international law that represent a common position. Since international relations involve states with differing social systems, levels of economic development, and national and historical traditions, all of these factors influence the formation of international law (Hryshchuk, 2007).

Universal (Humanitarian) Guarantees are based on the principle of universal human values, moral norms, and the idea of equality of all people in terms of rights and opportunities. These guarantees guide society and the state toward ethical principles of mutual respect, mutual support, and tolerance in the sports environment, contributing to the establishment of a climate of social justice.

The development of the idea of human equality is closely tied to the understanding of human nature. Therefore, S. Rabinovych's view is quite appropriate—that human equality should be viewed through the lens of human nature, in combination with natural law and human rights (Rabinovych, 2006).

4. Conclusions

Thus, it can be concluded that the guarantees of equal rights and opportunities in the field of physical culture and sports represent a multidimensional system that combines general social preconditions with specific legal instruments aimed at ensuring the effective implementation of the principle of equality in this area. The effectiveness of this mechanism directly depends on its normative clarity, institutional capacity, and the specifics of law enforcement, which make it possible to ensure not only the formal declaration of equality but also its actual realization in social life. Therefore, the conducted study confirms that equality in the sphere of physical culture is not only a legal principle but also a social standard that must be ensured through a system of diverse guarantees.

References

Bokalo, N. I. (2014). *Formuvannia ta rozvytok idei rivnosti v pravi: filosofsko-pravovyi vymir* [Formation and development of the idea of equality in law: Philosophical and legal dimension] (Candidate's thesis). Lviv State University of Internal Affairs. (in Ukrainian)

Hryshchuk, O. V. (2007). *Liudska hidnist u pravi: filosofski problemy* [Human dignity in law: Philosophical problems]. Lviv State University of Internal Affairs. (in Ukrainian)

Konstytutsiia Ukrainy vid 28.06.1996 r. [Constitution of Ukraine dated June 28, 1996]. (1996). *Verkhovna Rada of Ukraine*. Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text (in Ukrainian)

Mahnovskyi, I. I. (2003). *Harantii prav i svobod liudyny ta hromadianyna v pravi Ukrainy (teoretyko-pravovyi aspekt)*[Guarantees of human and civil rights and freedoms in the law of Ukraine: Theoretical and legal aspect] (Candidate's thesis). Kyiv National University of Internal Affairs. (in Ukrainian)

Onishchenko, N. M., Suniehin, S. O., & Kleshchenko, N. O. (2024). Yurydychni harantii prava liudyny na myr: zmistovni kharakterystyky [Legal guarantees of the human right to peace: Substantive characteristics]. *Naukovi perspektyvy*, *1*(43), 700–718. (in Ukrainian)

Polianskyi, A. O. (2015). *Pravove rehuliuvannia trudovykh vidnosyn profesiinykh sportsmeniv v Ukraini* [Legal regulation of labor relations of professional athletes in Ukraine] (Candidate's thesis). Kharkiv. (in Ukrainian)

Rabinovych, S. (2006). Z istorii antychnoho pravorozuminnia: vchennia rannikh stoikiv ta epikureitsiv pro pryrodnu spravedlyvist [From the history of ancient legal understanding: The teachings of the early Stoics and Epicureans about natural justice]. *Yurydychna Ukraina*, *10*, 3–7. (in Ukrainian)

Sakharuk, I. S. (2017). Rivnist prav ta mozhlyvostei pratsivnykiv yak pravova osnova kontseptsii hidnoi pratsi [Equality of rights and opportunities of workers as a legal basis for the concept of decent work]. *Aktualni problemy vitchyznianoi yurysprudentsii*, *6*, 63–67. (in Ukrainian)

Sportyvna khartiia Yevropy vid 24 veresnia 1992 r. [European Sports Charter of September 24, 1992]. (1992). *Council of Europe*. Retrieved from https://rm.coe.int/16804c9dbb

Uvarova, O. O., & Daineko, K. K. (2016). *Zakhyst prav zhinok: yurydychni instrumenty zabezpechennia gendernoi rivnosti v Ukraini* [Protection of women's rights: Legal instruments for ensuring gender equality in Ukraine]. Kyiv. (in Ukrainian)

Vasylchenko, O. P. (2023). Realizatsiia sotsialno-ekonomichnykh prav z ohliadu na pryntsyp rivnosti [Implementation of socio-economic rights in view of the principle of equality]. *Pravo i hromadianske suspilstvo*, *4*, 26–35. (in Ukrainian)

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ВИДИ ГАРАНТІЙ ДОТРИМАННЯ РІВНИХ ПРАВ ТА МОЖЛИВОСТІ ГРОМАДЯН У СФЕРІ ФІЗИЧНОЇ КУЛЬТУРИ І СПОРТУ

Анотація. ***Метою*** статті є визначення видів гарантій дотримання рівних прав та можливості громадян у сфері фізичної культури і спорту та їх характеристика. ***Результати.*** У статті автором здійснено комплексний науково-правовий аналіз гарантій дотримання рівних прав та можливостей громадян у сфері фізичної культури та спорту, розкрито їх правову природу, особливості реалізації та класифікацію. Акцентовано увагу на аналізі чинного законодавства України та міжнародних нормативних актів, що визначають основні стандарти рівності у спортивній діяльності. Досліджено концептуальні підходи до розуміння гарантій рівності у спортивній сфері в контексті конституційних принципів, міжнародно-правових стандартів та адміністративно-правового регулювання. Автором наведено ряд наукових позицій у контексті дослідження та здійснено їх теоретико-правовий аналіз. Сформульовано авторську класифікацію видів гарантій дотримання рівних прав та можливостей громадян у сфері фізичної культури та спорту. Здійснено теоретико-правову характеристику кожного виду гарантій. Міжнародно-правові гарантії походять з міжнародних договорів та документів, ратифікованих Україною, які зобов'язують державу імплементувати міжнародні стандарти у національне законодавство та практику. Такого роду гарантії сприяють формуванню єдиного міжнародного стандарту рівних можливостей у спорті та фізичної культури. ***Висновки.*** Зроблено висновок, що гарантії дотримання рівних прав та можливостей у сфері фізичної культури та спорту є багатовимірною системою, що поєднує загальні соціальні передумови з конкретними правовими інструментами, спрямованими на забезпечення ефективного функціонування принципу рівності у цій сфері. Ефективність даного механізму залежить безпосередньо від його нормативної визначеності, інституційної спроможності та специфіки правозастосування, що дозволяють забезпечити формальне проголошення рівності та її фактичну реалізацію в суспільному житті. Тож, проведене дослідження підтвердило, що рівність у сфері фізичної культури є не лише юридичним принципом, але й соціальним стандартом, який має бути забезпечений через систему різноманітних гарантій.

Ключові слова: фізична культура, спорт, гарантії, рівні можливості, правова рівність, адміністративно-правовий механізм, правове регулювання, адміністративне законодавство.

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TASKS AND FUNCTIONS OF THE CYBER POLICE DEPARTMENT IN UKRAINE

Abstract. ***Purpose.*** The aim of this article is to analyze the legislative understanding of the tasks and functions of the Cyber Police Department of the National Police of Ukraine. ***Results.*** In the context of the rapid development of information technologies, crime is increasingly taking diverse forms and employing a wide range of criminal methods. Therefore, combating offenses that target electronic governance, e-banking services, electronic commerce, and related domains is a key factor in building Ukraine as a democratic and rule-of-law state grounded in the principles of legality, the rule of law, and the protection of human and civil rights. As of today, the primary expectations for ensuring cybersecurity lie with the Cyber Police Department of the National Police of Ukraine, which operates as an interregional territorial body and holds the status of a legal entity under public law. The identification of the tasks and functions of the Cyber Police Department is a crucial element in defining the specific nature of its activities and its administrative and legal status. This article proposes an original definition of the concept of "tasks of the Cyber Police Department of the National Police of Ukraine," understood as the legislatively established avenues for achieving specific objectives–namely, the implementation of state policy in the field of combating cybercrime, and the provision of information and analytical support to the leadership of the National Police and government authorities on issues falling within the cyber police's remit. ***Conclusions.*** Given the specific nature of the Cyber Police Department's activities, it is proposed that its tasks be classified into general and special categories, as well as into tasks related to state secrets and those not involving classified information. These tasks are closely intertwined with areas of activity, which are referred to as "functions." The functions of the Cyber Police Department of the National Police of Ukraine are defined as a set of legally established administrative, operational-search, regulatory, personnel-related, informational, and preventive areas of activity of this law enforcement agency, the performance of which is conditioned by its objectives in the field of combating cybercrime.

Key words: tasks, functions, Cyber Police Department in Ukraine, cyberspace, administrative and legal status.

1. Introduction

In the current context of the development of information technologies, crime is increasingly taking on diverse forms and employing various criminal methods. Consequently, counteracting offenses targeting electronic governance, e-banking services, and electronic commerce has become one of the critical elements in building Ukraine as a democratic, rule-of-law state grounded in the principles of legality, the rule of law, and the protection of human and civil rights (Bereza, 2017).

Modern challenges and threats–primarily hybrid in nature–are driven by a combination of socio-demographic, economic, political, legal, psychological, and technological factors. These require a systemic response and the appropriate transformation of public authorities, particularly law enforcement agencies. Among them, a prominent role is assigned to the National Police of Ukraine, which plays a key part in ensuring the development of a secure living environment as the foundation of national security. As of today, the main expectations regarding the protection of the modern cyberspace are placed on the Cyber Police Department of the National Police of Ukraine, which functions as an interregional territorial body with the status of a legal entity under public law (Bereza, 2017).

The scientific and theoretical foundations for studying the tasks and functions of the police as a law enforcement service agency–including the Cyber Police Department–have been established by the research of leading scholars such as O.M. Bandurka, O.V. Batrachenko, O.I. Dovhan, A.M. Kulish, L.V. Mohylevskyi, O.M. Muzychuk, D.S. Pryputen,

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V.V. Sokurenko, V.A. Troyan, V.V. Chumak, D.V. Shvets, V.I. Shamrai, among others.

Defining the tasks and functions of the Cyber Police Department of the National Police of Ukraine is a crucial component of determining the specific features of its activities and administrative-legal status, as the successful and effective performance of its powers depends on a clear legislative understanding of its tasks and functions as a foundational element of the administrative-legal status of any public authority.

2. Analysis of the Tasks of the Cyber Police Department of the National Police of Ukraine

In his examination of the concept of "task" in relation to public authority, O.H. Komisarov argues that while goals may be unattainable within a specific (planned) timeframe, progress toward those goals must be ongoing. Unlike goals, however, tasks must be achievable–though not always enforceable. Alongside this exists the notion of an ideal, a goal that may never be fully attained but toward which one must continually strive (Komisarov, 2002).

Tasks represent the specification of the pathways necessary and sufficient to achieve the ultimate purpose for which a public authority is established. In other words, tasks stem from the overarching goal and serve as a means of realizing it. The process of setting tasks brings together the desirable (what is to be achieved) and the possible (what resources are available). Therefore, in order for tasks to be meaningful, they must be attainable but should also require maximum effort from the institution. Tasks should be oriented both toward the present and the future, as they provide benchmarks for planning and serve as the standards against which outcomes are evaluated.

According to the Law of Ukraine "On the National Police," the following are among the tasks assigned to the police:

1. Ensuring public safety and order;
2. Protecting human rights and freedoms, as well as the interests of society and the state;
3. Counteracting crime;
4. Providing assistance, within the limits established by law, to individuals who require help due to personal, economic, or social reasons, or as a result of emergencies (Law of Ukraine On the National Police, 2015).

In turn, taking into account the specific nature of the Cyber Police Department's activities, as defined in the "Regulations on the Cyber Police Department of the National Police of Ukraine," approved by the Order of the National Police of Ukraine, the Department is tasked with the following:

1. Ensuring the implementation of state policy in the field of combating cybercrime;
2. Conducting information and analytical support for the leadership of the National Police of Ukraine and state authorities regarding the status of issues within its competence;
3. Developing and implementing state policy aimed at preventing and counteracting criminal offenses whose preparation, commission, or concealment involves the use of computers, systems, computer networks, and telecommunications networks (Order of the National Police of Ukraine on Approval of the Regulations on the Cyber Police Department of the National Police of Ukraine, 2015).

Taking the above into account, we propose the following authorial definition of the concept of "tasks of the Cyber Police Department of the National Police of Ukraine." These tasks constitute legally defined pathways for achieving the Department's specific objectives–namely, the implementation of state policy in the field of combating cybercrime, and the provision of information and analytical support to the leadership of the National Police of Ukraine and public authorities regarding matters within the Department's competence.

Given the specificity of the activities of the Cyber Police Department of the National Police of Ukraine, it is reasonable to propose an original classification of its tasks into the following categories: (1) general and special tasks, and (2) tasks not related to state secrets and those that are related to state secrets. At the same time, it is necessary to review existing classifications of police tasks proposed by scholars in the field of administrative law.

For example, V.V. Chumak identifies the following classification of police tasks:

– **General (strategic) police tasks**, such as: "maintaining safety, peace, and order in society" (Denmark); "ensuring and strengthening order and peace in the country" (Malta); "ensuring peace in the country" (Cyprus); "maintaining peace and order and ensuring the safe social development of citizens, including the fulfillment of general police duties and road safety" (Greece); "protection of human rights and freedoms" (Lithuania);

– **Tasks in the sphere of personal and property security**, including: "protection of property, life, and personal dignity of citizens" (Slovenia); "ensuring personal security of citizens, protection of their rights and freedoms, and legitimate interests" (Ukraine); "personal and property security of citizens" (Belarus); "guaranteeing personal and public safety" (Latvia); and "protection of the Pope both within the state during papal ceremonies and receptions, and during travel in Italy and abroad" (Vatican);

– **Tasks in the field of protecting society and the state from criminal and other threats**, such as: "prevention and suppression of offenses," and "detection and investigation of crimes, as well as the search for offenders" (Ukraine); "prevention and detection of crimes, and apprehension of offenders" (Cyprus); "prevention of crimes and other offenses," and "investigation of crimes and criminal search" (Latvia);

– **Tasks in the field of public order protection**, such as: "protection and maintenance of public order" (Ukraine); "public order protection" (Belarus); "ensuring public order and security" (Lithuania); "ensuring public order, personal and public safety" (Kyrgyzstan); "crime prevention and protection of the state and democratic government within the constitutional framework, including the implementation of public and state security policy" (Greece); "law enforcement and public order maintenance" (Cyprus);

– **Tasks of a social (humanitarian) nature**, such as participation in the provision of social and legal assistance to individuals and legal entities (Ukraine, Belarus); and providing assistance in emergencies–particularly to persons affected by unlawful acts or natural disasters, or those in helpless conditions (Lithuania);

– **Tasks of a special nature**, such as performing military duties during peacekeeping missions abroad (Carabinieri, Italy); ensuring the security of borders, airspace, international airports and railways, and protecting public officials, federal buildings, and diplomatic missions (Federal Police of Germany) (Pronevych, 2010).

Based on the above, the **general tasks** of the Cyber Police Department of the National Police of Ukraine include: ensuring public safety and order; protecting fundamental human rights and freedoms, as well as the interests of society and the state; combating cybercrime; and providing legally prescribed assistance to individuals who require it due to personal, economic, or social circumstances, or in the event of emergencies.

The **special tasks** of the Cyber Police Department of the National Police of Ukraine include: implementing state policy in the field of combating cybercrime; informing the public in advance about emerging cyber threats; introducing software tools for the systematization of cyber incidents; and responding to inquiries from foreign partners received via the National 24/7 Contact Point Network (Website of the Cyber Police Department, 2023).

Tasks that are **not related to state secrets** include the development and implementation of state policy aimed at preventing and combating criminal offenses whose preparation, commission, or concealment involves the use of computers, computer systems and networks, or telecommunication networks.

It is also essential to separately define the **tasks of the Cyber Police Department in the field of crime prevention**, particularly by legislatively establishing the jurisdiction over cybercrimes committed in the areas involving the use of computers, systems and computer networks, telecommunication networks, state information resources, and critical information infrastructure. Furthermore, it is crucial to significantly increase liability for interference with the functioning of such systems, thereby securing the special responsibility of the Cyber Police of Ukraine in this domain.

On this basis, we propose the following **classification of tasks in the field of combating cybercrime**, aligned with the typology of cyber offenses:

– **Unauthorized interference** with the operation of electronic computing machines (computers), automated systems, computer networks, or telecommunications networks (Article 361 of the Criminal Code of Ukraine);

– **Creation for the purpose of use, distribution, or sale** of malicious software or hardware, as well as their distribution or sale (Article 361-1);

– **Unauthorized sale or dissemination of restricted-access information** stored in computers, automated systems, computer networks, or on information carriers (Article 361-2);

– **Unauthorized actions involving information** processed in computers, automated systems, or computer networks, or stored on information carriers, committed by a person authorized to access such information (Article 362);

– **Violation of rules** for the operation of electronic computing machines (computers), automated systems, computer networks, or telecommunications networks, or of procedures or regulations for information protection (Article 363);

– **Obstruction of the functioning** of electronic computing machines (computers), automated systems, computer networks, or telecommunications networks through the mass distribution of telecommunication messages (Article 363-1), among others (Criminal Code of Ukraine: dated April, 2001).

The proposed legislative classification of the tasks of the Cyber Police Department of the National Police of Ukraine will contribute to their more consistent and structured implementation. It will also

facilitate the identification of new functions and the corresponding scope of authority aimed at ensuring cybersecurity and protecting citizens' rights.

Accordingly, the implementation of the National Police's tasks in Ukraine reflects police activity grounded in the principles enshrined in current legislation, while also aligning with modern European integration trends. These **principles**, as the fundamental guidelines underlying the operations of every police authority and division, serve to foster the development of a police force modeled on **European standards**. In turn, **police tasks** determine the methods by which police activity is carried out, based on these foundational principles (Shevchuk, 2019).

3. Analysis of the Functions of the Cyber Police Department of the National Police of Ukraine

Tasks are closely intertwined with the main areas of activity, which are referred to as "functions."

Defining the relationship between functions and tasks of a state authority, N.V. Lebid notes that functions are characterized by continuity and permanence, not being conditioned by specific events or actions. In contrast, **tasks** are of a temporary nature, and upon their completion, they are either removed or replaced with new ones. Therefore, within the legal status of a public authority, it is both possible and appropriate to define and differentiate its functions by referring to the tasks assigned to it. According to the author, **functions** are defined as the main interconnected areas of activity carried out by the public authority, its structural subdivisions, officials, and civil servants in order to achieve the overall goal (Lebid, 2004).

Accordingly, the **functions of the Cyber Police Department of the National Police of Ukraine** can be defined as a set of legally established administrative, operational and investigative, regulatory, personnel, informational, and preventive areas of activity of this law enforcement agency, the performance of which is determined by the tasks related to combating cybercrime.

Regarding existing classifications of police functions, O.S. Pronevych, based on a comprehensive analysis of the theory and practice of police activity, distinguishes the following functions of the police:

1. **Administrative** (administrative-executive; executive-coercive);
2. **Operational and investigative**;
3. **Criminal procedural** (investigative);
4. **Preventive and social** (preventive and prophylactic, social and service-oriented);
5. **Protective** (Pronevych, 2010).

At the same time, D.S. Denysiuk, based on an analysis of the Law of Ukraine "On the National Police" and the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Regulation on the National Police," identifies the following **functions of the police**:

1. Social and service function;
2. Preventive and prophylactic function aimed at preventing offenses;
3. Criminal procedural function;
4. Operational and investigative function;
5. Permissive (licensing) function;
6. Protective function;
7. Function of logistical and technical support;
8. Function of international cooperation;
9. Informational support function;
10. Scientific and methodological function;
11. Personnel (HR) function;
12. Function of socio-legal protection (Denysiuk, 2016).

In the context of the research topic, it should be noted that the concept of the **functions of the Cyber Police Department of the National Police of Ukraine** has not yet been legally defined. Nevertheless, the legislation regulating the activities of the Cyber Police Department, particularly as a law enforcement agency, employs the term *"functions"*.

According to Article 3 of the **Regulations on the Cyber Police Department of the National Police of Ukraine**, published on the official website of the Department, a list of core functions has been made publicly available. These functions are performed by the Department in accordance with its assigned tasks and include the following:

1. Developing, defining, and ensuring the implementation of a set of organizational and practical measures aimed at preventing and combating criminal offenses in the field of cybercrime;
2. Undertaking, within the limits of its competence, the necessary operational and investigative measures to detect the causes and conditions leading to the commission of criminal offenses in the field of cybercrime;
3. Determining key areas of work and operational service tactics to counter cybercrime;
4. Taking legally prescribed measures to collect and generalize information regarding operationally significant entities, including those in the telecommunications sector, internet service providers, banking institutions, and payment systems, for the purpose of crime prevention, detection, and suppression;
5. Organizing and monitoring the performance of subordinate cyber police

units in complying with Ukrainian legislation on cybercrime, enforcing service discipline and classified information regimes, participating in comprehensive inspections of their activities, and taking measures to eliminate identified shortcomings;

6. Initiating, with the approval of the leadership of the National Police of Ukraine, the conduct of comprehensive inspections, audits, and other reviews of subordinate units;

7. Conducting public awareness campaigns on the proper use of modern technologies and the importance of cyber threat prevention and legal compliance;

8. Ensuring, in accordance with national legislation, the creation and maintenance of databases and automated information systems in support of service activities;

9. Organizing the execution of instructions issued by investigators and prosecutors regarding investigative and covert investigative actions in criminal proceedings;

10. With the approval of the leadership of the National Police of Ukraine, organizing comprehensive and targeted operational and preventive measures across the country or specific regions, including in cooperation with foreign law enforcement bodies;

11. Developing recommendations to improve the professional skills and awareness of National Police units and the public regarding the results of cyber police activities;

12. Studying national and international best practices in combating cybercrime and submitting proposals to the leadership of the National Police for their implementation;

13. Submitting legislative initiatives and participating in the development of draft legislation and other regulatory acts in the area of cybercrime prevention;

14. Establishing and maintaining a 24/7 contact network to provide emergency assistance during cybercrime investigations, to pursue offenders, and to collect digital evidence;

15. Supporting the operation of local forensic laboratories and rapid response teams for on-site data extraction from digital storage devices;

16. Analyzing and systematizing data on cybercrime and technology-related offenses received via call centers, email communications, and online feedback terminals;

17. Collecting, systematizing, and analyzing information on criminal processes and crime-fighting efforts nationwide and regionally, assessing performance indicators, and providing reports to the leadership of the National Police, Ministry of Internal Affairs, and other public authorities;

18. Establishing partnerships and cooperation with domestic public authorities, other law enforcement agencies, the private sector, and foreign and international law enforcement institutions to enhance cybercrime prevention and strengthen public trust;

19. Ensuring the timely review of inquiries and requests from citizens, enterprises, institutions, and organizations, as well as monitoring compliance with proper procedures for their registration, processing, and response;

20. Supporting the effective selection, assignment, training, and professional development of personnel within the Department and its subordinate units;

21. Participating in the organization and hosting of training events, conferences, and scientific-practical forums on cybercrime prevention;

22. Reviewing the performance of units, submitting proposals for improvement, and recommending disciplinary action or commendation for personnel, as appropriate;

23. Exercising other powers in accordance with the requirements of current legislation (Order of the National Police of Ukraine on Approval of the Regulations on the Cyber Police Department of the National Police of Ukraine, 2015).

Based on the analysis of the **Law of Ukraine "On the National Police"** and the **Order of the National Police of Ukraine "On the Approval of the Regulations on the Cyber Police Department of the National Police of Ukraine"**, we propose the following classification of the core **functions** of the Department:

1. **Administrative function** – for instance, the Department organizes and monitors the activities of subordinate cyber police units to ensure compliance with Ukrainian legislation in the area of cybercrime prevention.

2. **Operational and investigative function** – within the limits of its competence, the Department carries out operational and investigative measures to identify the causes and conditions leading to the commission of criminal offenses in the field of cybercrime. It also organizes the execution of instructions from investigators and prosecutors regarding investigative (search) actions and covert investigative (search) actions in criminal proceedings.

3. **Regulatory (rule-making) function** – the Department submits proposals to improve legislation in the area of cybercrime prevention and participates in the development and drafting of legislative and other normative legal acts in this domain.

4. **Personnel function** – the Department ensures the proper selection, assignment,

training, and development of its staff and of personnel in its subordinate units.

5. **Information and analytical function** – the Department ensures, in accordance with Ukrainian law, the creation and maintenance of data sets and automated information systems in support of official activity; it collects, systematizes, and analyzes information about criminal processes and the state of crime prevention activities at national and regional levels; it also ensures timely processing of citizen and institutional inquiries within the Department's competence, and monitors adherence to procedures for their registration, tracking, and response.

6. **Preventive and awareness-raising function** – the Department defines, develops, and implements a set of organizational and practical measures aimed at preventing and counteracting criminal offenses in the sphere of cybercrime. Additionally, it carries out educational campaigns among the public regarding compliance with Ukrainian legislation in the use of modern technologies, and the protection against and prevention of cyber threats in everyday life.

It is also important to highlight the specific functions of the Cyber Police Department of the National Police of Ukraine in the field of cybercrime prevention and response, in particular:

1. defines, develops, and ensures the implementation of a set of measures aimed at preventing and counteracting criminal offenses in the area of cybercrime;

2. within the scope of its competence, takes the necessary operational and investigative measures to identify the causes and conditions that lead to the commission of criminal offenses in the field of cybercrime;

3. implements statutory measures for collecting and analyzing information concerning objects of operational interest, including those in the telecommunications sector, internet service providers, banking institutions, and payment systems, in order to prevent, detect, and suppress criminal offenses;

4. organizes and supervises the activities of subordinate cyber police units in fulfilling the requirements of Ukrainian legislation in the field of combating cybercrime;

5. conducts public awareness campaigns regarding compliance with Ukrainian law in the use of modern technologies, and the protection against and prevention of cyber threats in daily life;

6. ensures the development and maintenance of data sets and automated information systems in accordance with the needs of operational activities;

7. coordinates the execution, within its competence, of instructions issued by investigators and prosecutors concerning investigative (search) and covert investigative (search) actions within criminal proceedings, among other functions (Website Wikipedia, 2023).

Thus, the above provisions allow for defining the functions of the Cyber Police Department of the National Police of Ukraine as a set of administratively, operationally, normatively, personnel-related, informational, and preventive activities enshrined at the normative-legal level. These activities are directly driven by the tasks aimed at countering cybercrime.

4. Conclusions

To summarize, the tasks and functions of the Cyber Police Department of the National Police of Ukraine are an essential component in identifying the specific features of its activities and its administrative and legal status. The effective implementation of the Department's powers depends on a clear legislative understanding of its tasks and functions, which serve as a foundational element of the administrative and legal status of any public authority.

The implementation of the National Police's tasks in Ukraine is carried out on the basis of principles enshrined in current legislation, taking into account contemporary trends in European integration. These principles, as guiding ideas underlying the functioning of each police authority and unit, are intended to contribute to the further development of the police as an institution aligned with European standards. In turn, the tasks of the police determine the means through which police activities are carried out, which are grounded in these principles.

The functions of the Cyber Police Department of the National Police of Ukraine represent a set of administratively, operationally-investigative, regulatory, staffing, informational, and preventive activities codified at the normative-legal level. The execution of these functions is driven by the Department's mission to prevent and combat cybercrime.

References

Bereza, V.V. (2017). Pryntsypy diialnosti Departamentu kiberpolitsii Natsionalnoi politsii Ukrainy: teoretyko-pravovi aspekty [Principles of the Cyber Police Department of the National Police of Ukraine: Theoretical and Legal Aspects]. *Forum prava*, (5), 44–48. (in Ukrainian).

Denysiuk, D.S. (2016). Funktsii Natsionalnoi politsii Ukrainy: poniattia ta klasyfikatsiia [Functions of the National Police of Ukraine: Concept and Classification]. *Yurydychnyi naukovyi elektronnyi zhurnal*, (4), 114–117. (in Ukrainian).

Komisarov, O.H. (2002). *Protses tsilepokladannia v orhanizatsii diialnosti orhaniv vnutrishnikh sprav Ukrainy na suchasnomu etapi rozvytku* [The Process of Goal Setting in the Organization of the Activities of the Internal Affairs Bodies of Ukraine at the Current Stage of Development]. Candidate's thesis, Zaporizhzhia. (in Ukrainian).

Criminal Code of Ukraine: dated April 5, 2001 No. 2341-III. (2001). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14 (in Ukrainian).

Lebid, N.V. (2004). *Administratyvno-pravovyi status derzhavnykh inspektsii v Ukraini* [Administrative and Legal Status of State Inspectorates in Ukraine]. Candidate's thesis, Kharkiv. (in Ukrainian).

Order of the National Police of Ukraine on Approval of the Regulations on the Cyber Police Department of the National Police of Ukraine: dated November 10, 2015 No. 85. (2015). Retrieved from http://old.npu.gov.ua/mvs/control/main/uk/publish/printable_article/1816252 (in Ukrainian).

Pronevych, O.S. (2010). Funktsii politsii (militsii): normatyvno-doktrynalna interpretatsiia [Functions of the Police (Militia): Normative-Doctrinal Interpretation]. *Pravo i Bezpeka*, (4), 141–146. (in Ukrainian).

Pronevych, O.S. (2010). Zavdannia politsii (militsii) u yurydychnii politseistytsi [Tasks of the Police (Militia) in Legal Policing]. *Visnyk Kharkivskoho natsionalnoho universytetu vnutrishnikh sprav*, (4), 191–205. (in Ukrainian).

Shevchuk, H. (2019). Pryntsypy ta zavdannia diialnosti Natsionalnoi politsii Ukrainy [Principles and Tasks of the National Police of Ukraine]. *Pidpryiemnytstvo, hospodarstvo i pravo*, (7), 120–124. (in Ukrainian).

Website of the Cyber Police Department. (2023). Retrieved from https://cyberpolice.gov.ua/ (in Ukrainian).

Wikipedia. (2023). *Kiberpolitsiia Ukrainy* [Cyber Police of Ukraine]. Retrieved from https://uk.wikipedia.org/wiki/Кіберполіція_України#Завдання (in Ukrainian).

Law of Ukraine on the National Police: dated July 2, 2015 No. 580-VIII. (2015). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19 (in Ukrainian).

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ЗАВДАННЯ ТА ФУНКЦІЇ ДЕПАРТАМЕНТУ КІБЕРПОЛІЦІЇ В УКРАЇНІ

Анотація. ***Метою*** статті є аналіз законодавчого розуміння завдань та функцій Департаменту кіберполіції Національної поліції України. ***Результати.*** У сучасних умовах розвитку інформаційних технологій, злочинність дедалі частіше набуває різних форм та використовує різні методи злочинної діяльності, саме тому протидія злочинам, що націлені на електронне управління, електронне банківське обслуговування, електронну комерційну діяльність тощо, є одним із чинників розбудови України як демократичної, правової держави з пануванням принципів законності та верховенства права, а також дотримання прав людини й громадянина. Станом на сьогодні основні сподівання щодо забезпечення безпеки сучасного кіберпростору покладається на Департамент кіберполіції Національної поліції України як міжрегіональний територіальний орган зі статусом юридичної особи публічного права. Визначення завдань та функцій Департаменту кіберполіції Національної поліції України є важливою складовою визначення особливостей його діяльності та адміністративно-правового статусу. Запропоновано авторське визначення поняття «завдання Департаменту кіберполіції Національної поліції України», де останні являють собою визначені на нормативно-правовому рівні шляхи досягнення конкретної мети діяльності, а саме – реалізація державної політики у галузі протидії кіберзлочинності, інформаційно-аналітичне забезпечення керівництва Національної поліції України та органів державної влади про стан вирішення питань, віднесених до компетенції кіберполіції. ***Висновки.*** Із урахуванням специфіки діяльності Департаменту кіберполіції Національної поліції України доцільним вбачаємо визначити власну класифікацію завдань кіберполіції на: загальні та спеціальні, та на завдання, що не пов'язані із державною таємницею та такі, що пов'язані зі державною таємницею.У свою чергу, завдання тісно переплітаються із напрямками діяльності, його мають назву «функції». Функції Департаменту кіберполіції Національної поліції України пропонуємо запропоновано визначити наступним чином, - це комплекс закріплених на нормативно-правовому рівні адміністративних, оперативно-розшукових, нормотворчих, кадрових, інформаційних і профілактичних напрямів діяльності цього правоохоронного органу, виконання яких зумовлено завданнями у сфері протидії кіберзлочинності.

Ключові слова: завдання, функції, Департамент кіберполіції в Україні, кібепростір, адміністративно-правовий статус.

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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

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of regulating arms circulation, 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:

2. a) expand legal opportunities for:

3. – the state in protecting its sovereignty, constitutional order, rule of law, society, citizens, and their property;

4. – citizens in defending their lives and health, including through the use of firearms, and in conducting economic activities related to firearms circulation;

5. b) define the characteristics of lawful behavior in the sphere of arms circulation while preventing illegal arms trafficking and other security risks;

6. 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;

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

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

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

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

11. 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;

12. 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.

References:

Andriiash, V. I. (2013). *Derzhavna polityka: kontseptualni aspekty vyznachennia* [State policy: Conceptual aspects of definition]. *Derzhavne upravlinnia: udoskonalennia ta rozvytok*, (9), 71–75. (in Ukrainian)

Didenko, S. V. (2016). *Pravovi aspekty poniattia ta klasyfikatsii zbroi v Ukraini* [Legal aspects of the

concept and classification of weapons in Ukraine]. *Naukovyi visnyk Khersonskoho derzhavnoho universytetu*, (3), 135–140. (in Ukrainian)

Kurinnyi, Ye. (2021). *Pro model obihu tsyvilnoi zbroi v Ukraini* [On the model of civil weapons circulation in Ukraine]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav*, (2), 125–130. (in Ukrainian)

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

Nersesian, A. S. (2023). *Zakonodavcha rehlamentatsiia ta efektyvnist rehuliuvannia obihu zbroi za zarubizhnym zakonodavstvom* [Legislative regulation and effectiveness of arms circulation regulation under foreign legislation]. *Pravova derzhava*, (34), 518–528. (in Ukrainian)

Shemshuchenko, Yu. S., & Babkin, V. D. (1997). *Politolohichnyi entsyklopedychnyi slovnyk: Navchalnyi posibnyk dlia studentiv vyshchykh navchalnykh zakladiv* [Political science encyclopedic dictionary: A teaching aid for university students]. Kyiv: Heneza. (in Ukrainian)

Shumeiko, T. A. (2022). *Administratyvno-pravovi zasady formuvannia ta realizatsii derzhavnoi polityky u sferi obihu zbroi v Ukraini* [Administrative and legal principles of the formation and implementation of state policy in the sphere of arms circulation in Ukraine]. Kyiv: National Academy of Internal Affairs. (in Ukrainian)

Shyts, O. (2023). *Nezakonnyi obih zbroi yak zahroza natsionalnii bezpetsi. Tsili derzhavnoi polityky v sferi kontroliu za obihom zbroi, povnovazhennia derzhavnykh orhaniv v tsii sferi* [Illegal arms circulation as a threat to national security. Objectives of state policy in the field of arms circulation control and powers of state bodies in this area]. Kyiv. (in Ukrainian)

Vasylevych, V. (2023). *Derzhavna polityka u sferi kontroliu za obihom zbroi v umovakh viiny* [State policy in the field of arms circulation control under wartime conditions]. *Kryminolohichna teoriia i praktyka*, (1), 17–20. (in Ukrainian)

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НОРМОТВОРЧІ ПРОЦЕДУРИ ЯК ОСНОВА ФОРМУВАННЯ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОБІГУ ЦИВІЛЬНОЇ ВОГНЕПАЛЬНОЇ ЗБРОЇ

Анотація. ***Мета*** статті полягає у тому, щоб розкрити нормотворчі процедури як основа формування державної політики у сфері обігу цивільної вогнепальної зброї. ***Результати.*** У статті розкрито, що нормотворчість як основа формування державної політики у сфері обігу цивільної вогнепальної зброї – це цілеспрямована, нормативно врегульована діяльність уповноважених органів державної влади та місцевого самоврядування, спрямована на юридично-технічну розробку, прийняття, адаптацію та системну координацію нормативно-правових та індивідуальних актів як інструментів реалізації внутрішньої політики держави для регулювання обігу зброї, які трансформуються у вимоги правопорядку. Визначено, що нормотворчість у сфері формування державної політики щодо обігу цивільної вогнепальної зброї реалізується через чітко структуроване адміністративне провадження, що включає узгоджені етапи ініціювання, розробки, погодження, прийняття та контролю за виконанням нормативних актів, що відображають специфіку обігу зброї як особливої сфери публічної безпеки. Процедури нормотворення мають забезпечити одночасне дотримання принципу безпеки держави та права громадян на самозахист. Розкрито, що практична реалізація державної політики здійснюється через відомчі акти, прийняті відповідними центральними органами виконавчої влади (насамперед Міністерством внутрішніх справ України). Особливістю нормотворчих процедур є прив'язка їх змісту до конкретних функцій та завдань суб'єктів державної політики обігу зброї. ***Висновки.*** Зроблено висновок, що механізм реалізації нормотворчих процедур у процесі формування державної політики у сфері обігу цивільної вогнепальної зброї складається: 1) ініціювання нормотворчого процесу, що обумовлено виявленням об'єктивної соціальної потреби у регулюванні обігу зброї; 2) розробка проектів у межах компетенції суб'єктів нормотворення, з дотриманням адміністративних процедур (створення робочих груп, громадська та правова експертиза, оцінка регуляторного впливу, погодження з іншими органами державної влади тощо); 3) подання проектів на розгляд Верховної Ради України, обговорення в профільних комітетах (наприклад, Комітет з питань правоохоронної діяльності), та прийняття; у сфері підзаконного регулювання видання відомчих нормативно-правових актів; 4) впровадження, реалізація та контроль норм права.

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

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SPECIFICITIES OF DOCUMENTING SMUGGLING OF CULTURAL VALUES AND WEAPONS IN UKRAINE

Abstract. ***Purpose.*** The purpose of the article is to study the specific tactics of documenting smuggling of cultural values and weapons in Ukraine. ***Results.*** The article analyses the specific features of documenting crimes related to smuggling of cultural values and weapons in Ukraine. The paper examines the legal framework governing the processes of recording such offences, the specifics of methods and means of documentation, and the role of law enforcement bodies in collecting evidence. The key challenges faced by law enforcement bodies in documenting smuggling, including concealment of criminal acts, use of modern technologies and international channels, are considered. Emphasis is placed on international cooperation and the use of advanced technical means for recording and examining evidence. The article offers recommendations for improving the smuggling documentation process, which will contribute to the effective prevention and investigation of these crimes. ***Conclusions.*** It is concluded that a clear procedure for operational staff in the course of identifying persons involved in smuggling cultural values and weapons across the State border requires a high level of professional training from the Security Service of Ukraine. This includes in-depth knowledge of the current legislation governing operative-search activities, inquiry and pre-trial investigation, as well as familiarity with departmental regulations that define the specifics of the customs authorities and related processes. In the process of operative development, measures are implemented to respond to situations when operational staff receive primary information about individuals or groups of individuals committing crimes under investigation. The process of documenting the facts of smuggling is situational and depends on the circumstances that arise when signs of such crimes are detected. This activity of operational units is aimed at recording specific facts and is constantly influenced by available information and changes in the operative and tactical situation. In each situation, the initial information becomes the basis for formulating tasks for operational staff, among which one can distinguish between typical tasks that are typical for most cases and specific tasks that are inherent only in specific circumstances.

Key words: smuggling, cultural values, weapons, documentation, law enforcement bodies, evidence, international cooperation, criminal offences, investigation methods, technical means.

1. Introduction

Obviously, resistance from the criminal environment can be overcome both in the course of criminal procedural functions and within the framework of operative-search activities aimed at combating crime. However, with the complication of the criminogenic situation in the country and the increase in organised forms of criminal activity, the problem of operative-search support for criminal proceedings in the context of counteraction by the criminal environment has acquired an independent significance, important for the development of the theory of operative-search activities.

The study of operative-search activities as a tool of operative-search support for combating smuggling of cultural values and weapons has become relevant in the current context of reforming the entire system of combating crime. The reason for this is the change in the model of law enforcement in accordance with the current Criminal Procedure Code of Ukraine, which led to amendments to the Law of Ukraine 'On Operative-search Activities' (Alforov, 2013).

The purpose of the article is to study the specific tactics of documenting smuggling of cultural values and weapons in Ukraine.

Nowadays, contemporary scientists have achieved significant success in this area, having contributed to the formation and further development of operative and search documentation, in particular, scientific and theoretical developments have been made

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by S.V. Albul, M.O. Bandurka, R.S. Bielkin, V.H. Bobrov, V.I. Vasylynchuk, A.F. Voznyi, D.V. Hrebelskyi, M.L. Hribov, E.O. Didorenko, I.P. Kozachenko, Ya.Yu. Kondratiev, Ye.D. Lukianchykov, D.Y. Nikiforchuk, Yu.Yu. Orlov, M.A. Pohoretskyi, V. H. Samoilov, O.S.Starenkyi,S.S.Cherniavskyi,A.M.Cherniak and others. However, the issue of operative-search documentation of crimes in general, and smuggling of cultural property and weapons in particular, is insufficiently researched, which raises a number of questions for practical operatives regarding the information to be documented, including the methods of documenting such information, etc.

2. Regulatory and legal framework for documenting smuggling of cultural values and weapons in Ukraine

Today, in the theoretical and applied school of operative-search activities, it is common to use the term 'documenting' during pre-trial investigation. In this sense, we will also use the concepts of operational proving, criminal search proving, operative-search proving, etc. and 'operative-search documentation' (Albul, Andrusenko, 2016). Without focusing in detail on the correlation between these concepts of documenting and proving, as this has been the subject of scientific research by many scholars in the field of the theory of the OSA, criminal procedure, and forensics, we note that in this research we rely on the provisions of current legislation and use the term "documentation."

Considering the concept of 'documentation', it should be noted that the legal literature also has no consensus on the understanding of the concept of 'documentation', which is due to the lack of regulatory framework for the definition of this term, its content and meaning. Indeed, the Law of Ukraine 'On Operative-search Activities' does not use the term proving, instead, the Law states that certain OSA are conducted to identify and document the facts of unlawful acts (Article 8(2)), and the OSA materials are used to obtain factual data that may be evidence in criminal proceedings (Article 10(2)) (Law of Ukraine on operative-search activities, 1992).

Different approaches to defining the tasks of documentation are related to the fact that scholars analyse the actions of operational units which are different in nature. In this context, A. Sakovskyi's opinion is reasonable, as he proposes to distinguish between the concepts of 'documentation', 'operational documentation' and 'operational and search documentation' (Sakovskyi, 2020).

The category of 'operative-search documentation', which has a relatively narrow meaning (carried out exclusively within the framework of operative-search activities (OSA) and is associated with the name of the relevant law), should be considered as an integral part of the broader concept of 'operational documentation'. This concept includes the actions of operational units both within the scope of the OSA and within the criminal procedure, and is based on the provisions of Article 41 of the CPC of Ukraine (Criminal Procedure Code of Ukraine, 2012) 'Operational units' and Articles 5 and 7 of the Law of Ukraine on operative-search activities (Law of Ukraine on operative-search activities, 1992).

When considering the issue of operative-search documentation of cultural values and weapons in Ukraine, we do not generalise in the context of comparing operative-search documentation with documents drawn up in the course of the conduct of the OSA or materials of the operative-search case. In this context, we propose to understand *operative-search documentation of smuggling of cultural values and weapons as a complex activity of operatives, which is implemented in the course of their conduct of the investigative activity in the manner and forms provided for by the current legislation, and consists in the knowledge (collection (search and detection), study (verification) and evaluation) by the operational officer of information about the unlawful acts of individuals and groups engaged in the illegal transfer of cultural values and weapons across the state border, as well as recording of the obtained factual data in the relevant official documents of the OSA for the purpose of further storage, transformation, transfer, certification of the obtained information in the interests of the OSA and criminal proceedings (author's definition)*.

Given the changes that came into force in connection with the adoption of the current CPC of Ukraine, the discussion is still ongoing about the possibility of replacing the search operations with the conduct of covert investigative (search) actions and, accordingly, replacing the process of documentation with evidence in criminal proceedings. The opinions of some authors are divided, some claiming that conducting CISA allows for immediate receipt of evidence in criminal proceedings (Babikov, Sokolkin, 2014), while conducting search operations does not allow for immediate use of documented information in criminal proceedings, but requires its legalisation or declassification. However, we are proceeding from the tasks of the OSA, and therefore it is necessary to expose criminal networks with transnational ties (Verbenskyi, Bezkhlibnyk,

Berlach, 2010), organised criminal groups with a hierarchical structure, a significant degree of secrecy, and a corruption component, so their development within the scope of an operative-search case is more effective, as it allows the use of a wider arsenal of operative-search measures, covert means and covert methods (Chikovani, 2014; Hribov, Sukhachov, 2019).

In addition, combating smuggling of cultural values and weapons has specific features related to the attitude of the population to these crimes, as well as the fact that the perpetrators are persons who have the appropriate power and can use it in case of a threat – in our case, the threat of criminal prosecution.

Despite the covert nature of certain investigative measures, in particular documentary measures, it can be seen that many of them have significant parallels with investigative actions. For example, measures such as interviews can be compared to interrogation (Smyk, 2018), and inquiries and requests for materials are similar to the procedures provided for in Article 93 of the CPC of Ukraine (Criminal Procedure Code of Ukraine, 2012). Collecting samples for comparative research is not much different from obtaining samples necessary for comparative research and from obtaining samples for examination; identification of a person is not much different from line-up; inspection of premises, buildings, structures, areas and vehicles is not much different from examination; control over mail, telegraph and other communications is not much different from seizure of correspondence, its inspection and confiscation, etc.

The survey of respondents revealed that the following investigative (search) actions are most often carried out when documenting this category of crimes

– investigative inspection – 87.4%;

– presentation of items for identification – 43.7 %;

– search, seizure, forensic examinations – 68.5 %;

– interrogation of suspects and witnesses – 91.3%;

– entering a person's home or other property – 45.5%.

In the course of documenting smuggling, timely detection, recording and seizure of objects, documents, substances and traces is of key importance, which is ensured by conducting an investigative examination. This inspection provides the primary information necessary to formulate versions of the crime, the mechanism of its commission, as well as the circle of participants and the identity of the offender, which is important for organising the search for the offender and other operative-search activities.

Prior to the investigative inspection, preparatory measures are taken, including securing the scene and preserving the situation in its original form. Security tasks may be assigned to customs officers, police, the administration of enterprises or institutions, as well as to persons who have discovered the fact of smuggling.

It is important to remember that when choosing a method of recording illegal activities, the operational units of the Security Service should be aware of the purpose and objectives of the OSA and criminal procedure. Therefore, search operations cannot be automatically replaced by covert investigative (search) actions or vice versa. OSA is aimed at detecting and exposing illegal activities (including their immediate termination), while criminal procedure is aimed at investigating criminal offences, proving the guilt of a particular person and criminal prosecution.

The above factors combine to create significant obstacles to effective documentation by the Security Service's operational units under Article 201 of the Criminal Code of Ukraine (2001), and require a comprehensive approach and specialised methods of work on the part of law enforcement bodies.

It should be noted that today the doctrine of OSA discussions has formed a position according to which OSA is performed in three forms: operative-search, operative development and operative prevention. In each of these forms, operational staff receive actual data on the illegal activities of individuals or groups.

However, operative-search documentation is carried out exclusively during operative-search and operative development, when personnel detect, perceive and record actual data on illegal activities, for example, in the process of preventing or stopping the smuggling of cultural values and weapons across the state border of Ukraine.

Phases of operative-search documentation of organised groups involved in smuggling cultural property and weapons across the state border:

– Detection and recording of traces of illegal activities, that is, includes the establishment of signs indicating a criminal offence related to illegal border crossing; identification of a scheme of illegal activities (usually during an operative-search);

– Identification of the means and instruments used to commit the offence, that is, establishing their location, as well as additional traces (form, method of their removal); identification of objects that may become evidence;

– Identification of persons involved in illegal activities, that is, identification of persons who

prepared or committed the crime, assisted in its organisation or concealment; identification of persons who have information and may be involved as witnesses;

– Planning measures to record unlawful acts, that is, developing an action plan to record the crimes of a particular person or group of persons, determining the need to use technical and software tools;

– Recording and stopping illegal actions, that is, using technical means to document actions; stopping the illegal activities of individuals or groups.

Therefore, documentation is an important element of operative-search activities, which ensures the effective detection, recording and stopping of illegal activities related to the smuggling of cultural property and weapons.

Nowadays, the doctrine of operative-search activities (OSA) enshrines the approach according to which OSA is carried out in three main forms: operative-search, operative development and operative prevention. In the process of implementing each of these forms, operational staff receive factual data on the illegal activities of individuals and groups.

The operative documentation is an integral part of each of these forms. However, operative-search documentation is used exclusively during operative-search and operative development. In these cases, employees collect, analyse and record factual data on the illegal activities of individuals or groups, in particular in the process of preventing, detecting or suppressing smuggling of cultural property and weapons.

Therefore, the main areas of documenting the smuggling of cultural property and weapons across the state border include:

– Detection, recording and stopping of illegal activities;

– Detection and verification of persons who may act as witnesses in criminal proceedings;

– Detection of items and documents that may become sources of evidence and ensuring their preservation for further use.

It should be noted that if any grounds for conducting search operations exist, an operative-search case is commenced (Law of Ukraine on operative-search activities, 1992).

The decision to commence such a case must be officially approved by the head of the Security Service of Ukraine or other body specially authorised by law to perform operative-search activities. If the person involved in the crime is identified, the case is commenced against that person; if the person remains unknown, the case is opened against unidentified persons planning to commit a criminal offence. All search operations are carried out within the framework of such a case, which stores all documents created by operational staff during the development of a particular person (Albul, Yehorov, Poliakov, Shchurat, 2023).

3. Documentation measures for the smuggling of cultural values and weapons in Ukraine

In the course of search operations against organised groups involved in smuggling cultural values and weapons across the state border of Ukraine, operational units have the right to obtain the following documents:

– From citizens, organisations, enterprises and institutions (regardless of ownership), officials, government representatives, mass media: statements of citizens, notifications from organisations, enterprises, institutions and officials.

– Explanations from citizens and officials.

– Materials of inspections, inventories, audits of financial and economic activities of enterprises, institutions and organisations (Law of Ukraine on operative-search activities, 1992).

– Replies to official inquiries from organisations, enterprises, institutions and officials on issues within their competence.

– Copies of documents of archived criminal proceedings (cases) that were in the proceedings of law enforcement bodies or judicial authorities.

This approach ensures the effective organisation and conduct of operational and investigative activities aimed at combating smuggling and other crimes.

The inspection of smuggled items such as firearms, ammunition and cultural values should be of particular importance, as this process requires security measures to protect those present during the inspection. An operational officer usually cannot know in advance what kind of objects or substances they will be dealing with. This is especially true for explosive devices, hazardous substances or cultural values, which are often declared incorrectly or not at all.

However, basic security measures should be taken when verifying operational information during the inspection, including: to involve specialists from customs laboratories in inspections; to use specialised alarm devices in case of suspicion of explosives transportation; to use dosimeters and other radiation detection devices to detect radioactive substances; to take security measures, including isolating facilities, fencing off dangerous areas and restricting access to people; to entrust sampling of hazardous substances only to specialists, for example, from customs laboratories.

Verification of information and inspection of smuggled items usually includes inspection of places where they are likely to be stored. Most often, smuggled goods are found in

– unaccompanied baggage and medium-sized cargo;

– containers, loading platforms, bunkers, compartments of vehicles;

– cabins, passenger and cargo compartments of cars, buses, trains, ships, aircraft, as well as in the structural elements of containers;

– international postal items;

– containers accompanied by representatives of law enforcement agencies.

The following technical means are used to detect contraband:

– X-ray television devices that help detect foreign objects or cavities in hand luggage and baggage;

– fluoroscopic X-ray machines that allow to see through small objects (boxes, handbags, tubes, etc.) to detect hidden objects;

– mobile specialised equipment used for inspection of bulky goods, containers and vehicles;

– inspection mirrors, endoscopes, probes, echolocation devices that provide access to hard-to-reach places;

– metal detectors and alarm devices that help detect metal objects;

– equipment for measuring the volume of smuggled strategically important materials, such as metals and their alloys;

– means for unlocking containers, packaging, boxes and containers.

Therefore, the use of all available tools significantly increases the effectiveness of detecting hidden smuggling of cultural property and weapons in various objects and possible artificial environments.

All facts should contain references to the pages of documents obtained in accordance with the Law 'On Operative-Search Activities' and be attached to the materials of the operative-search case. If the documents were studied electronically (for example, through open sources or state information systems), this should also be indicated with grounds for the need to obtain official copies from the relevant state authorities.

The report of the operational officer may include covertly obtained copies of documents that indicate the preparation or commission of smuggling of cultural property and weapons, as well as audio recordings of intelligence interviews conducted by him/her. At this phase, information is collected in the course of an operative search, which is the initial stage of cognition in operative-search activities (Albul, Yehorov, Poliakov, Shchurat, 2023).

Documentation includes not only generating new documents, but also obtaining existing documents that can be used to meet the objectives of the OSA and criminal proceedings. Operational staff can obtain ready-made documents that are relevant to decision-making in the OSA and criminal proceedings, as well as documents that can potentially serve as material evidence (Hribov, Sukhachov, 2019).

Criminal activities of organised groups engaged in smuggling cultural values and weapons across the state border are documented, in particular, through direct observation of real events by operatives. This enables real-time information to be obtained about the circumstances of illegal activities that are under the 'control' of operational staff.

In the course of operative documentation, a decision may be made to develop a person who has not previously aroused suspicion, if identified:

– signs of a specific crime;

– signs indicating criminal activity of the person;

– anti-social behaviour;

– traces of past criminal activity;

– connections and environment of a criminal nature;

– grounds to consider the person as an object of operative development in the future.

The use of operative development in documenting the smuggling of cultural property and weapons is to conduct covert search operations against individuals or groups reasonably suspected of preparing or committing a crime. The main purpose of such activities is to prevent or solve crimes in situations where other methods are not effective or complex enough.

Within the scope of operative development, it is necessary to use all available measures and opportunities provided for by the rights of operational units in accordance with Article 8 of the Law of Ukraine 'On Operative-Search Activities' (Law of Ukraine on operative-search activities, 1992).

Documentation in the course of the operative development of a particular person involves not only recording the facts of the crime, but also the collection, analysis and evaluation of factual data that can help prevent future crimes.

It should be noted that among the documents that record the illegal activities of a particular person, the records reflecting the progress of documentation and the results of the relevant search operations are of particular importance (controlled delivery, apprehension, penetration and inspection of publicly inaccessible places, surveillance, audio, video control of a person or place, removal of information from electronic communication networks, electronic information networks). It is also important to record information about persons who are aware of circumstances that will be relevant

to criminal proceedings, as well as items and documents that may be of evidentiary value in criminal proceedings.

4. Conclusions

A clear procedure for operational staff in the course of identifying persons involved in smuggling cultural values and weapons across the State border requires a high level of professional training from the Security Service of Ukraine. This includes in-depth knowledge of the current legislation governing operative-search activities, inquiry and pre-trial investigation, as well as familiarity with departmental regulations that define the specifics of the customs authorities and related processes.

In the process of operative development, measures are implemented to respond to situations when operational staff receive primary information about individuals or groups of individuals committing crimes under investigation. The process of documenting the facts of smuggling is situational and depends on the circumstances that arise when signs of such crimes are detected. This activity of operational units is aimed at recording specific facts and is constantly influenced by available information and changes in the operative and tactical situation.

In each situation, the initial information becomes the basis for formulating tasks for operational staff, among which one can distinguish between typical tasks that are typical for most cases and specific tasks that are inherent only in specific circumstances.

References:

Albul, S.V., Andrusenko, S.V. (2016). Osnovy operatyvno-rozshukovoi diialnosti [Basics of operative-search activity]. Odesa : ODUVS (in Ukrainian).

Albul, S.V., Yehorov, S.O., Poliakov, Ye.V., Shchurat, T.H. (2023). Operatyvno-rozshukova diialnist [Operatyvno-rozshukova diialnist]. Odesa : ODUVS (in Ukrainian).

Alforov, S.M. (2013). Aktualni problemy operatyvno-rozshukovoi diialnosti orhaniv vnutrishnikh sprav [Current problems of operative-search activity of internal affairs bodies]. *Operatyvno-rozshukova diialnist orhaniv vnutrishnikh sprav: problemy teorii ta praktyky, 3*, 3-5. (in Ukrainian).

Babikov, O. Sokolkin, V. (2014). Vykorystannia u kryminalnomu provadzhenni yak dokaziv materialiv, otrymanykh operatyvnymy pidrozdilamy u zdiisnenni ORD [Use in criminal proceedings as evidence of materials obtained from operative-search operations in the course of the ORD]. *Visnyk prokuratury, 11*, 131-135. (in Ukrainian).

Hribov, M.L. Sukhachov, O.O. (2019). Konspiratsiia yak systema zakhodiv zabezpechennia nehlasnosti kryminalno-protsesualnoi ta operatyvno-rozshukovoi diialnosti operatyvnykh pidrozdiliv pravookhoronnykh orhaniv [Conspiracy as a system of ensuring the secrecy of criminal-procedural and operational-search activities of operational divisions of law enforcement agencies]. *Visnyk kryminalnoho sudochynstva*, 4, 33-44. (in Ukrainian).

Kryminalnyi kodeks Ukrainy: vid 5 kvitnia 2001 roku № 2341-III [Criminal Code of Ukraine: as of April 5, 2001, No. 2341-III]. (2001). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#n250 (in Ukrainian).

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

Organised crime and migrants. Report Committee on Migration, Refugees and Displaced Persons Rapporteur: Mr Irakli Chikovani, Georgia, ALDE Reference to Committee: Doc. 13486, Reference 4047 of 23 May 2014. Retrieved from http://assembly.coe.int/nw/xml/XRef/Xref-XML-2HTML-en.asp?fileid=22316&lang=en

Sakovskyi, A. (2020). Operatyvno-rozshukove dokumentuvannia yak poshukovo-piznavalnyi protses i skladnyk operatyvno-rozshukovoi diialnosti [Operative-search documentation as a search-and-rescue process and a repository of operative-search activities]. *Pidpryiemnytstvo, hospodarstvo i pravo, 7*, 371–377. (in Ukrainian).

Smyk, S.I. (2018). Pidstavy ta protsesualnyi poriadok zdiisnennia dopytu na stadii dosudovoho rozsliduvannia v sudovomu zasidanni [The principles and procedural rules for the settlement of a claim at the stage of a preliminary investigation in a court session]. *Doctor's thesis*. Kyiv (in Ukrainian).

Verbenskyi, M.H., Bezkhlibnyk, R.M., Berlach, A.I. (2010). Problemy protydii transnatsionalnii orhanizovanii zlochynnosti [Problems of combating transnational organized crime]. Kharkiv : KhNUVS (in Ukrainian).

Zakon Ukrainy Pro operatyvno-rozshukovu diialnist: vid 18 liutoho 1992 roku № 2135-XII [Law of Ukraine on operative-search activities of 18 July 1992 No. 2135-XII]. (1992). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text (in Ukrainian).

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ОСОБЛИВОСТІ ДОКУМЕНТУВАННЯ КОНТРАБАНДИ КУЛЬТУРНИХ ЦІННОСТЕЙ ТА ЗБРОЇ В УКРАЇНІ

Анотація. ***Мета*** статті полягає у дослідженні особливостей тактики документування контрабанди культурних цінностей та зброї в Україні. ***Результати.*** Стаття присвячена аналізу особливостей документування злочинів, пов'язаних із контрабандою культурних цінностей та зброї в Україні. У роботі досліджено нормативно-правову базу, що регулює процеси фіксації таких правопорушень, особливості методів і засобів документування, а також роль правоохоронних органів у зборі доказів. Розглянуто ключові виклики, з якими стикаються правоохоронні органи під час документування контрабанди, зокрема приховування злочинних дій, використання сучасних технологій і міжнародних каналів. Значну увагу приділено міжнародному співробітництву та застосуванню передових технічних засобів для фіксації і дослідження доказів. У статті запропоновано рекомендації щодо вдосконалення процесу документування контрабанди, які сприятимуть ефективному запобіганню та розслідуванню цих злочинів. ***Висновки.*** Зроблено висновок, що чіткий порядок дій оперативних працівників під час розробки осіб, причетних до контрабанди культурних цінностей та зброї через державний кордон, вимагає від співробітників Служби безпеки високого рівня професійної підготовки. Це включає глибокі знання чинного законодавства, яке регулює оперативно-розшукову діяльність, дізнання та досудове слідство, а також ознайомленість з відомчими нормативними актами, що визначають особливості діяльності митних органів та пов'язаних з ними процесів. У процесі оперативної розробки реалізуються заходи, спрямовані на реагування на ситуації, коли оперативні працівники отримують первинну інформацію про осіб або групи осіб, що вчиняють злочини, які розслідуються. Процес документування фактів контрабанди є ситуативним і залежить від обставин, що виникають під час виявлення ознак таких злочинів. Ця діяльність оперативних підрозділів спрямована на фіксацію конкретних фактів і перебуває під постійним впливом доступної інформації, а також змін оперативно-тактичної обстановки. Вихідна інформація в кожній ситуації стає основою для формулювання завдань оперативним працівникам, серед яких можна виокремити типові завдання, характерні для більшості випадків, та специфічні, які притаманні лише конкретним обставинам.

Ключові слова: контрабанда, культурні цінності, зброя, документування, правоохоронні органи, докази, міжнародне співробітництво, кримінальні правопорушення, методи розслідування, технічні засоби.

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THE CONTENT AND SCOPE OF THE CONCEPT OF 'ENTITY ENSURING ADMINISTRATIVE AND LEGAL SUPPORT OF LAW AND ORDER'

Abstract. ***Purpose.*** The purpose of the scientific article is to reveal the content and define the scope of the concept of "entity ensuring administrative and legal support of law and order." ***Results.*** The article reveals the content and defines the scope of the concept of 'entity ensuring administrative and legal support of law and order.' It is found that national legislation and legal doctrine of Ukraine do not reveal the content of the category 'entity ensuring administrative and legal support of law and order.' It is stated that in the mechanism of administrative and legal support of law and order, entities are the central static element which enter into public relations regulated by law in accordance with their sectoral content. It is concluded that the scope of the concept of 'entity ensuring administrative and legal support for law and order' includes: law-making entities; law application entities; law enforcement entities (law enforcement bodies). According to the structural organisation, the entities of administrative and legal support of law and order are proposed to be grouped into collegial and individual entities. It is stated that, according to the manner of formation, the entities ensuring administrative and legal support of law and order may be established as a result of elections, by assignment or through self-organisation. It is highlighted that the entities ensuring administrative and legal support of law and order have the following features: they are a static component of the mechanism for ensuring law and order in the State; their organisation and functioning are determined by the regulatory and legal framework in the State; the purpose of their activities is to create the necessary environment for the exercise of human rights and freedoms, their direct protection and defence; the means of achieving this goal are administrative and legal. ***Conclusions.*** The concept of 'entities ensuring administrative and legal support of law and order is defined as the state, its legislative, executive and judicial authorities, enterprises, institutions, organisations of all forms of ownership, public associations, individual citizens who exercise the rights, duties, powers and responsibilities strictly defined by the Constitution of Ukraine, laws, other legal regulations to create the necessary environment for the existence of a stable law and order and guarantee the orderliness of social relations in the state, through administrative and legal means.'

Key words: state body, executive body, law and order, body ensuring law and order, law enforcement body, administrative and legal support, entity ensuring administrative and legal support of law and order.

1. Introduction

In the context of the ongoing armed conflict on the territory of the state, along with the simultaneous implementation of transformational reforms in the European integration direction, Ukrainian society is developing, and rapid progress is being made in some sectors of civil society (technological, social, spiritual, cultural, etc.). However, statistics confirm an 18% increase in the number of detected cases of illegal handling of weapons in 2023 (from 4.5 thousand to 5.3 thousand), which is due to the increase in the number of weapons and ammunition held by the civilian population, including trophy weapons, as a result of russia's ongoing armed aggression against Ukraine (Report of the National Police of Ukraine on the results of its work in 2023, 2024). In addition, the facts of crimes committed on the territory of Ukraine by members of the armed forces of the russian federation, belarus and their accomplices are being revealed (since the beginning of the armed aggression of the russian federation - 110.7 thousand) (Report of the National Police of Ukraine on the results of its work in 2023, 2024). In 2023,

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about 2.9 thousand important information resources of the Russian Federation and Belarus were blocked (government websites, banking and media, air travel, etc.) (Report of the National Police of Ukraine on the results of its work in 2023, 2024). Other types of law and order violations in Ukraine are also steadily increasing in number and scale. Accordingly, the mechanism for ensuring law and order in the country needs to be strengthened, and stabilising factors need to be introduced, the role of which is mainly played by law and order. It is the law enforcement agencies that can perform the functions of normalising the operational situation and the development of society and the state in these circumstances.

A review of the leading scientific studies conducted in Ukraine in recent years enables to state that the researchers have not focused enough on the theoretical study of the content and scope of the concept 'entity ensuring administrative and legal support of law and order'. Certain aspects of this issue have been covered in the works of O. Dzhafarova, I. Okuniev, T. Podorozhna, O. Prokopenko, P. Rabinovych, O. Skakun, V. Sokurenko, V. Fatkhutdinov, M. Khavroniuk and others.

Therefore, the purpose of the scientific article is to reveal the content and define the scope of the concept of "entity ensuring administrative and legal support of law and order."

2. Content of the concept of 'entity ensuring administrative and legal support of law and order'

Neither national legislation nor legal doctrine of Ukraine reveal the content of the category 'entity ensuring administrative and legal support of law and order.' However, in the mechanism of administrative and legal support of law and order, entities are the central static element which enter into public relations regulated by law in accordance with their sectoral content. The relevance of the study is due to the need to develop a theoretical basis for further correct application of terms and concepts in practice. With a view to understanding the content of the concept of the category 'entity ensuring administrative and legal support of law and order', it is necessary to consider its essence with regard to its constituent elements.

The Dictionary of the Ukrainian Language interprets the word 'subject/entity' in the legal sense - a person or organisation as a holder of certain rights and obligations (Dictionary of the Ukrainian language in 11 volumes, 2005). The Dictionary of Legal Terms defines the term 'subject of law' as an individual or legal entity that is legally capable of having and exercising rights and legal obligations directly or through a representative, that is, legal personality. A subject of law is a mandatory element of legal relations in all branches of law, although in each of them it has certain specifics (Legal Dictionary. Collection of Legal Terms, 2019). Therefore, we can say that the subject of law and the participant in legal relations are interconnected.

It should be noted that the discussion among scholars continues to this day regarding the correlation of the concepts of 'subject of law' and 'participant in legal relations,' but most conclude that the concept of 'subject of law' is general and primary, and the concept of 'participant in legal relations' is specific and secondary. We agree that a participant in legal relations is an individually defined subject of law who has exercised his or her legal personality in terms of exercising specific rights and freedoms in specific legal relations, but not every subject of law is a participant in a particular legal relationship. The transformation of a subject of law into a participant in legal relations is associated with the process of transforming the possible into the actual, transforming the existence of objective law into real conduct (Sanzharuk, 2003). Given that entities ensuring law and order directly or indirectly perform functions related to ensuring law and order, they are participants in legal relations on ensuring law and order, and therefore are participants in legal relations.

Therefore, an entity ensuring administrative and legal support of law and order is a participant in legal relations arising in the state. Accordingly, a participant in legal relations is a holder of subjective rights and obligations. We agree with the position of O. Prokopenko that speaking about the entities ensuring law and order in the region, the author means the participants in such legal relations (and not the subjects of law), since they are endowed with a specific scope of powers defined at the legislative level - they have a legal obligation to perform law enforcement activities and enjoy the relevant rights in this regard, that is, they are real participants in such social relations regulated by law (Prokopenko, 2016).

According to the Ukrainian dictionary, 'support' means to: 1) supply something in sufficient quantity, satisfy someone or something in some needs; 2) create reliable conditions for the implementation of something; guarantee something; 3) protect, guard someone or something from danger (Dictionary of the Ukrainian language in 11 volumes, 2005).

Law enforcement is the process of guaranteeing a safe environment for all citizens in their daily lives, in accordance with the legal framework of the country, mainly by

preventing and deterring offences, as well as by taking appropriate measures to stop violations of the law (Sokurenko, 2021). The rule of law not only reflects the orderliness of social relations, but also reflects the quality of the activities of the entities that ensure it.

Therefore, it can be concluded that the specific feature of activities of entities ensuring law and order is that they create the necessary conditions for the realisation of human rights and freedoms, their direct protection and defence (Nehodchenko, 2004), create the necessary conditions for the existence of stable law and order, and guarantee the orderliness of social relations.

3. The role of the state in ensuring law and order

It is well known that the state plays a leading role in ensuring law and order. It ensures law and order through its bodies at the central and local levels. We agree with the conclusion of T. S. Podorozhna that the activities of the state authorities are aimed at establishing law and order, that is, achieving one of the possible states of organisation of the social system, caused (set) by the influence of regulatory factors. The actual activity of the State to ensure law and order includes such components as the subject (object) orientation of this activity, its goals and, accordingly, the forms, ways, methods of state legal activity, that is, the procedural principles of this activity. Therefore, law and order are both a process and a result of the operation of law (all legal means) and the purposeful influence of the State on social relations that are the subject matter of regulatory framework. The activities of the entities directly depend on their competence, which they have in accordance with their powers. In addition, the expediency of allocating public authorities in the field of ensuring law and order is an element of guarantees of its constitutionalisation, which is due to the effective system of such bodies. It is understood that only an effective system of competent public authorities will be able to ensure effective law and order in public relations (Podorozhna, 2017).

Thus, the entities ensuring law and order include the state and its bodies, local self-government bodies, individuals, legal entities of all forms of ownership, and public associations. Entities should have legal personality, which consists of a passive legal capacity (the ability to have rights and perform duties) and an active legal capacity (the ability to acquire and exercise subjective rights and duties through their actions).

The entities ensuring law and order are usually either specifically endowed with the relevant rights and duties in this field or these rights and duties are a concomitant consequence of their state activities or informal implementation of public duty. For example, the decisive role of the Verkhovna Rada of Ukraine is to constructively influence state authorities and local self-government bodies. The President of Ukraine is an integrating element of the system of entities ensuring law and order. The system of ensuring law and order also includes the Cabinet of Ministers of Ukraine and the judiciary (Fatkhutdinov, 2018). In other words, the entities ensuring law and order include state legislative, executive and judicial authorities, enterprises, institutions, organisations of all forms of ownership, public associations, and individual citizens in accordance with their competence.

Therefore, the scope of the concept of 'entity ensuring administrative and legal support for law and order' includes:

1. Law-making entities are authorised to establish (authorise), amend, and repeal legal norms, both at the legislative and regulatory levels. Such entities are both the state represented by state bodies and their officials (the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, central executive authorities, etc.) and civil society and its individual entities (territorial communities, associations of citizens). Within the scope of their competence, such entities may adopt relevant regulations or enter into regulatory agreements, including in the area of ensuring law and order;

2. Law application entities. In Ukraine, it is generally believed that only state bodies and public associations authorised by the state are entities of law application, since this activity must be of a state power nature (Rabinovych, 2007). However, the development of civil society encourages the expansion of the range of entities involved in law application. Therefore, the main entities involved in law application are state bodies, organisations and their officials. The state bodies whose main function is law application include executive authorities, administrative bodies, courts, prosecutor's offices, security services, police, investigative committees, correctional institutions, and notaries. A special place in the system of law application entities belongs to individual subjects of public law - officials who are the primary structural unit of a state body and its apparatus, enterprise, institution or organisation. Non-governmental organisations that have the right to perform law application activities include associations of citizens (public organisations, trade unions, local self-government bodies, arbitration courts). Kelman M.S. and Koval I.M. argue

that non-state (private) entities perform law application activities on clearly defined issues on the basis of delegated powers (Kelman, Koval, 2020);

3. Law enforcement entities (law enforcement bodies) – prosecutor's offices, the National Police, security services, the Military Law Enforcement Service in the Armed Forces of Ukraine, the National Anti-Corruption Bureau of Ukraine, state border protection bodies, the Bureau of Economic Security of Ukraine, penitentiary bodies and institutions, pre-trial detention centres, state financial control bodies, fisheries protection, state forest protection, other bodies performing law enforcement or law enforcement functions (Law of Ukraine On state protection of court and law enforcement officers, 1993).

According to the structural organisation, the entities of administrative and legal support of law and order are proposed to be grouped into collegial (such as the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, etc.) and individual (in particular, the President of Ukraine, officials, representatives of law enforcement agencies, individual citizens, etc.).

According to the manner of formation, the entities ensuring administrative and legal support of law and order may be established as a result of elections (for example, the President of Ukraine, MPs, etc.), by assignment (in particular, law enforcement agencies), and by self-organisation (NGOs, individuals, etc.).

In order to reveal the content of the concept of 'entities ensuring administrative and legal support of law and order,' it is important to highlight the specific features of this phenomenon of state and legal reality. Among the participants in legal relations in the State, they are: 1) they are a static component of the mechanism for ensuring law and order in the State; 2) their organisation and functioning are determined by the regulatory and legal framework in the State; 3) the purpose of their activities is to create the necessary environment for the exercise of human rights and freedoms, their direct protection and defence; the means of achieving this goal are administrative and legal.

4. Conclusions

Given the provisions of Ukrainian legislation, the theoretical achievements of domestic scholars, as well as the specific features of the entities ensuring administrative and legal support of law and order, we can propose the following definition of the concept of 'entities ensuring administrative and legal support of law and order is the state, its legislative, executive and judicial authorities, enterprises, institutions, organisations of all forms of ownership, public associations, individual citizens who exercise the rights, duties, powers and responsibilities strictly defined by the Constitution of Ukraine, laws, other legal regulations to create the necessary environment for the existence of a stable law and order and guarantee the orderliness of social relations in the state, through administrative and legal means.'

References:

Fatkhutdinov, V.H. (2018). Poniattia subiektiv, obiektiv ta zmistu administratyvno-pravovykh vidnosyn u sferi hromadskoi bezpeky [The concept of subjects, objects and content of administrative and legal relations in the sphere of public security]. *Derzhava ta rehiony.* Seriia Pravo, 1, 127-132. [in Ukrainian].

Kelman, M.S., Koval, I.M. (2020). Pryroda subiekta pravozastosuvannia [The nature of the subject of law enforcement]. *Yurydychnyi naukovyi elektronnyi zhurnal,* 2, 31-32. [in Ukrainian].

Nehodchenko, O.V. (2004). Zabezpechennia prav i svobod liudyny orhanamy vnutrishnikh sprav : orhanizatsiino-pravovi zasady [Ensuring human rights and freedoms by internal affairs bodies: organizational and legal principles]. *Candidate's thesis.* Kharkiv [in Ukrainian].

Podorozhna, T.S. (2017). Pravovyi poriadok: teoretyko-metodolohichni zasady konstytutsionalizatsii [Legal order: theoretical and methodological principles of constitutionalization]. *Candidate's thesis.* Kyiv [in Ukrainian].

Prokopenko, O.Iu. (2016). Shchodo vyznachennia poniattia «subiekt zabezpechennia pravoporiadku v rehioni» [On the definition of the concept of "subject of law enforcement in the region"]. *Pravo i bezpeka,* 1, 58–63. [in Ukrainian].

Rabinovych, P.M. (2007). Osnovy zahalnoi teorii prava ta derzhavy [Fundamentals of the general theory of law and state]. Vyd. 9-e, zi zminamy. Lviv: Krai [in Ukrainian].

Sanzharuk, T.O. (2003). Poniattia «subiekt prava» ta «subiekt pravovidnosyn»: pytannia rozmezhuvannia [The concepts of "subject of law" and "subject of legal relations": issues of demarcation]. *Aktualni problemy derzhavy i prava,* 21, 91-95. [in Ukrainian].

Slovnyk ukrainskoi movy v 11 tomakh [Dictionary of the Ukrainian language in 11 volumes]. (2005). Retrieved from https://slovnyk.ua [in Ukrainian].

Sokurenko, V.V. (2021). Rol politsii v zabezpechenni hromadskoho pravoporiadku [The role of the police in ensuring public law and order]. *Osobystist, suspilstvo, zakon,* 2, 207-210. [in Ukrainian].

Yurydychnyi slovnyk. Zbirnyk yurydychnykh terminiv [Legal Dictionary. Collection of Legal Terms]. (2019). *mego.info.* Retrieved from http://mego.info/iurydychnyi-slovnyk-zbirnyk-yurydychnykh-terminiv [in Ukrainian].

Zakon Ukrainy Pro derzhavnyi zakhyst pratsivnykiv sudu i pravookhoronnykh orhaniv: vid 23.12.1993 № 3781-XII [Law of Ukraine On state protection of court and law enforcement officers: dated 23.12.1993 No. 3781-XII]. (1993). URL: https://

zakon.rada.gov.ua/laws/show/3781-12#Text [in Ukrainian].

Zvit Natsionalnoi politsii Ukrainy pro rezultaty roboty u 2023 rotsi [Report of the National Police of Ukraine on the results of its work in 2023]. (2024). *npu.gov.ua*. Retrieved from https://www.npu.gov.ua/diyalnist/zvitnist/richni-zviti [in Ukrainian].

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ЗМІСТ ТА ОБСЯГ ПОНЯТТЯ «СУБ'ЄКТ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ПРАВОПОРЯДКУ»

Анотація. ***Метою*** наукової статті є розкриття змісту та визначення обсягу поняття «суб'єкт адміністративно-правового забезпечення правопорядку». ***Результати.*** В науковій статті розкрито зміст та визначено обсяг поняття «суб'єкт адміністративно-правового забезпечення правопорядку». З'ясовано, що національне законодавство та правова доктрина України не розкривають зміст категорії «суб'єкт адміністративно-правового забезпечення правопорядку». Констатовано, що в механізмі адміністративно-правового забезпечення правопорядку суб'єкти є центральним статичним елементом, які вступають у публічні відносини, що врегульовані правом відповідно до їх галузевого змісту. Зроблено висновок, що обсяг поняття «суб'єкт адміністративно-правового забезпечення правопорядку» становлять: правоутворюючі суб'єкти; суб'єкти правозастосування; правоохоронні суб'єкти (правоохоронні органи). За структурною організацією суб'єкти адміністративно-правового забезпечення правопорядку запропоновано поділити на колегіальні та одноособові. Відзначено, що за способом формування суб'єкти адміністративно-правового забезпечення правопорядку можуть створюватися в наслідок виборів, призначатися або шляхом самоорганізації. Виділено особливості суб'єктів адміністративно-правового забезпечення правопорядку: є статичною складовою механізму забезпечення правопорядку в державі; їх організація та функціонування визначені нормативно-правовими засадами в державі; метою їх діяльності є створення необхідних умов для реалізації прав і свобод людини, їх безпосередньої охорони та захисту; засоби досягнення цієї мети є адміністративно-правовими. ***Висновки.*** Запропоновано дефініцію поняття «суб'єкти адміністративно-правового забезпечення правопорядку – це держава, її органи законодавчої, виконавчої та судової влади, підприємства, установи, організації всіх форм власності, громадські об'єднання, окремі громадяни, які реалізують права, обов'язки, повноваження та відповідальність, суворо визначені Конституцією України, законами, іншими правовими актами щодо створення необхідних умов для існування стабільного правопорядку та гарантують впорядкованість суспільних відносин в державі, за допомогою адміністративно-правових засобів».

Ключові слова: державний орган, орган виконавчої влади, правопорядок, орган правопорядку, правоохоронний орган, адміністративно-правове забезпечення, суб'єкт адміністративно-правового забезпечення правопорядку.

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FORMS OF COOPERATION BETWEEN THE UNITS OF THE STATE BUREAU OF INVESTIGATION AND PRE-TRIAL INVESTIGATION BODIES AND THE MILITARY LAW ENFORCEMENT SERVICE IN COUNTERING MILITARY CRIMINAL OFFENSES

Abstract. ***Purpose.*** The purpose of this article is to identify the forms of cooperation between the units of the State Bureau of Investigation (SBI) and the pre-trial investigation bodies and the Military Law Enforcement Service in countering military criminal offenses. ***Results.*** Military criminal offenses are recognized as criminal offenses committed against the legally established procedure for performing or undergoing military service, committed by servicemen, as well as conscripts and reservists during training or assembly periods. It is emphasized that the term *"cooperation"* carries a significant semantic load. This is explained both by the complexity and multiplicity of meanings of the term, as well as by the diversity of perspectives from which it is studied. A common feature of nearly all definitions of the concept of *"cooperation"* is that authors interpret it as coordinated activity aimed at achieving a goal, performing tasks, or attaining a specific result. **Conclusions.** It is concluded that the forms of cooperation between operational units and pre-trial investigation bodies in countering military criminal offenses constitute a joint and coordinated activity based on legislative and subordinate regulatory acts (departmental instructions), under the guiding and organizing role of an operational officer. This cooperation involves a distribution of competence, functions, powers, and mutual responsibilities and is aimed at fulfilling the tasks of criminal justice. The forms of cooperation are differentiated depending on the objectives and tasks, the actors involved (operational unit officers, investigators), and the specific measures and actions taken. Based on the findings, the article proposes the development of an Instruction on Cooperation between the State Bureau of Investigation, pre-trial investigation bodies, and the Military Law Enforcement Service. This Instruction should stipulate that cooperation is carried out at both strategic and tactical levels. The strategic level includes the organization of the implementation of state policy in the field of combating military crimes, eliminating their causes and conditions, and improving the legal framework for combating military crimes. The tactical level encompasses the detection, documentation, suppression, solving, and investigation of military crimes.

Key words: State Bureau of Investigation, pre-trial investigation bodies, war crimes.

1. Introduction

Since the beginning of the full-scale invasion of Ukraine by the Russian Federation, servicemen of the Armed Forces of Ukraine have been defending our national borders. However, despite the conscientious and honest fulfillment of military duties by the overwhelming majority of military personnel, incidents of military criminal offenses committed by servicemen still occur within the Armed Forces of Ukraine.

Military criminal offenses are recognized as criminal acts against the legally established procedure of performing or undergoing military service, committed by servicemen, as well as by conscripts and reservists during the period of military training or assembly.

In accordance with Article 5 of the Law of Ukraine *On the State Bureau of Investigation*, one of the key tasks of the State Bureau of Investigation (hereinafter – SBI) is to prevent, detect, suppress, solve, and investigate criminal offenses against the procedure of military service (Law of Ukraine *On the State Bureau of Investigation*, 2015).

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According to official data, the majority of criminal proceedings investigated by the SBI concern military crimes.

Military crimes represent a particularly complex category of offenses due to the predominantly blanket nature of their legal norms. That is, in order to determine whether the elements of a criminal offense are present, it is necessary to refer to numerous regulatory acts that clarify relevant legal concepts.

Effective counteraction to military criminal offenses is only possible through the establishment of efficient cooperation between operational units and pre-trial investigation bodies.

In view of this, the issue of properly organizing effective cooperation between operational units and pre-trial investigation bodies in countering military criminal offenses is currently highly relevant and requires continuous attention and the implementation of practical measures for its improvement.

The theoretical foundation for the interaction of authorized units with other actors involved in countering military criminal offenses is formed by the scholarly works of domestic and foreign researchers in the fields of criminalistics, criminal procedure, and the theory of operational and investigative activities, in particular: V. I. Vasylynchuk, O. M. Dzhuzha, V. V. Topchii, S. R. Tagiyev, S. M. Kniaziev, D. Y. Nykyforchuk, V. L. Ortynskyi, M. A. Pohoretskyi, Ye. D. Skulysh, R.V.Osukhovskyi,O.O.Priadko,K.O.Chaplynskyi, O. V. Pchelina, S. S. Cherniavskyi, V. V. Shendryk, I. R. Shynkarenko, M. Ye. Shumylo, among others.

The works of these scholars have primarily focused on general theoretical issues of cooperation in countering criminal offenses.

At the same time, the problems of developing a conceptual approach to the forms of cooperation between operational units and pre-trial investigation bodies in the context of countering military criminal offenses, as well as ways to improve this cooperation in light of current legislative changes, remain outside the scope of the aforementioned and other studies.

The absence of an in-depth, comprehensive approach to studying these issues in the context of combating military criminal offenses has determined the relevance and the author's choice of the topic for this scientific article.

2. Specific Features of Defining the Concept of "Cooperation"

The cooperation of the State Bureau of Investigation (SBI) with other entities involved in countering military criminal offenses constitutes a form of organizing both operational and investigative activities and pre-trial investigations. Such cooperation is aimed at consolidating forces and resources to optimize performance and ensure the most rapid achievement of common goals through coordinated efforts (Priadko, 2023).

An analysis of existing research shows that legal science has not yet developed a unified approach to defining the concepts of "cooperation," "collaboration," "coordination," "alignment," and "assistance." In philosophy, cooperation is viewed as a category reflecting the processes of mutual influence among various entities, their interdependence, changes in state, and the generation of one object by another.

Theoretical definitions of cooperation are largely based on the core principles of military science, where cooperation is seen as a specific process organized according to task, location, and timing with the aim of effectively utilizing available forces and means to achieve the required result in the performance of service (combat) duties.

The term "cooperation" implies "to act jointly," "to work together," "to collaborate," and it is grounded in law and subordinate regulations. Cooperation represents joint or coordinated actions by operational units among themselves and with other departments and services, carried out within their competence and directed toward detecting and preventing crimes, as well as neutralizing the causes and conditions that contribute to their commission (Kovalenko, Moisieiev, Tatsii, Shemshuchenko, 2010).

As noted by K.O. Chaplynskyi, the prompt solving and investigation of serious and especially grave crimes directly depends on proper cooperation between operational and investigative units. Such cooperation enables effective planning of initial investigative (search) and procedural actions, as well as operational search measures (Chaplynskyi, 2022).

In this regard, the position of V.I. Vasylynchuk is appropriate: errors in establishing proper cooperation result in the loss of relevance and often the accuracy of acquired information. As a consequence, investigative efforts may yield poor results (Vasylynchuk, 2014).

It is also worth agreeing with the opinion of O.V. Pchelina, who asserts that cooperation enables the optimization of activity by its participants, thereby ensuring the effectiveness of pre-trial investigation and judicial proceedings as a whole, as well as operational search and covert investigative (search) actions (Pchelina, 2015). It is one of the methods of combating crime that involves coordination and combination of the efforts of several persons, units, or agencies in accordance with the law in order to optimize pre-trial investigations of criminal offenses (Pchelina, 2020).

Upon analyzing the definitions of cooperation, it can be concluded that the term carries significant semantic weight. This is due to the complexity and polysemy of the term, as well as the wide range of contexts in which it is studied. A common feature of nearly all definitions of "cooperation" is that authors interpret it as coordinated activity aimed at achieving a goal, performing tasks, or attaining a result.

According to Article 7 of the Law of Ukraine *On Operational and Investigative Activities*, the units conducting operational and investigative work are required to cooperate with each other and with other law enforcement bodies, including relevant authorities of foreign states and international anti-terrorist organizations, for the purpose of prompt and full prevention, detection, and suppression of criminal offenses (*Law of Ukraine On Operational and Investigative Activities*, 1992).

Article 22 of the Law of Ukraine *On the State Bureau of Investigation* defines SBI's cooperation with other state authorities and the central executive authority. The staffing structures of the central offices of such bodies provide for positions whose official duties include cooperation with the State Bureau of Investigation (*Law of Ukraine On the State Bureau of Investigation*, 2015).

The Strategic Program of the State Bureau of Investigation for 2017–2022 highlighted, as a separate focus, SBI's cooperation with state authorities and law enforcement agencies in countering criminal offenses, including military crimes. Such cooperation should be based on the principles of the rule of law, legality, impartiality, and the independence of each body, in alignment with the objectives of criminal proceedings. It is to be implemented in the following forms: exchange of information; joint research activities; development of measures to achieve criminal justice objectives and minimize corruption risks within each agency; locating individuals evading investigation; recovery of assets obtained through criminal means; protection of law enforcement officers and participants in criminal proceedings; preparation of joint legal acts for effective cooperation; and other forms of cooperation not prohibited by current legislation (*Strategic Program of the State Bureau of Investigation for 2017–2022*, 2017).

3. Defining the Forms of Cooperation Between Units of the State Bureau of Investigation

One of the forms of cooperation between units of the State Bureau of Investigation (SBI) is the exchange of operational information between the SBI and the National Anti-Corruption Bureau of Ukraine, the internal affairs bodies, the National Police of Ukraine, the Security Service of Ukraine, the Bureau of Economic Security of Ukraine, regarding joint operations, and other state authorities that, in accordance with the law, carry out operational and investigative activities. Such exchange is conducted upon written instruction of the heads of the respective units (*Law of Ukraine On the State Bureau of Investigation*, November 2015).

Taking into account that, pursuant to Part 3 of Article 216 of the Criminal Procedure Code of Ukraine, the units of the SBI have jurisdiction over criminal offenses "...against the established procedure for military service (military criminal offenses), except for offenses stipulated in Article 422 of the Criminal Code of Ukraine," the legislator did not define, in Article 22 of the Law of Ukraine *On the State Bureau of Investigation*, the mechanism for cooperation between the SBI and the Command of the Military Law Enforcement Service in the Armed Forces of Ukraine.

The Military Law Enforcement Service in the Armed Forces of Ukraine is a special law enforcement formation within the Armed Forces of Ukraine, established to ensure law and order and military discipline among servicemen of the Armed Forces of Ukraine in locations of military unit deployment, military educational institutions, establishments and organizations, military garrisons, as well as on the streets and in public places. Its tasks also include the prevention and suppression of criminal and other offenses within the Armed Forces of Ukraine; protection of the life, health, rights, and legal interests of servicemen, conscripts during training, and employees of the Armed Forces of Ukraine; safeguarding military property from theft and other unlawful encroachments; and participation in countering sabotage and terrorist acts at military facilities.

In accordance with Article 3 of the Law of Ukraine *On the Military Law Enforcement Service in the Armed Forces of Ukraine*, the core tasks of the Service include: identifying causes, preconditions, and circumstances of criminal and other offenses committed in military units and at military facilities; locating persons who have deserted or are absent without leave; preventing and suppressing criminal and other offenses in the Armed Forces of Ukraine; assisting, within its competence, operational and investigative bodies, pre-trial investigation authorities, courts, public authorities, local self-government bodies, military command bodies, enterprises, institutions, and organizations in the performance of their statutory duties.

Article 8 of the same Law tasks the Military Law Enforcement Service with a range of functions, including cooperation with military formations established under Ukrainian law, the National Police of Ukraine, and other law enforcement agencies. This includes the exchange of information with such agencies to detect offenses; and the execution, within the limits of its competence and in accordance with the law, of instructions from investigators and prosecutors, as well as court rulings and judges' resolutions (*Law of Ukraine On the Military Law Enforcement Service in the Armed Forces of Ukraine*, 2002).

Accordingly, the Military Law Enforcement Service is obliged to cooperate with law enforcement bodies, including the SBI units, in particular through the exchange of information to detect military criminal offenses.

Pursuant to Articles 9 and 25 of the Law of Ukraine *On the Prosecutor's Office*, Articles 5, 6, and 22 of the Law of Ukraine *On the State Bureau of Investigation*, Articles 7 and 8 of the Law of Ukraine *On the Military Law Enforcement Service in the Armed Forces of Ukraine*, and Clauses 3 and 4 of the *Regulations on the Ministry of Defence of Ukraine*, approved by Resolution of the Cabinet of Ministers of Ukraine No. 671 of November 26, 2014 (as amended by Resolution No. 730 of October 19, 2016), in order to ensure the exchange of information between the Prosecutor's Office, the State Bureau of Investigation, and the Military Law Enforcement Service in the Armed Forces of Ukraine, the Office of the Prosecutor General, the SBI, and the Ministry of Defence of Ukraine jointly adopted Order No. 25/60/99 of February 9, 2024 *On the Exchange of Information Between the Prosecutor's Office, the State Bureau of Investigation, and the Military Law Enforcement Service in the Armed Forces of Ukraine Regarding Offenses Committed by Servicemen, Employees of the Ministry of Defence of Ukraine, the Armed Forces of Ukraine, and the State Special Transport Service, Conscripts and Reservists During Military Assemblies, and the Conduct of Corresponding Verifications*.

According to this Order, and in line with Article 222 of the Criminal Procedure Code of Ukraine, and for the purpose of ensuring the fulfillment of criminal justice tasks within the scope of competence, the exchange of information concerning offenses committed by servicemen, employees of the Ministry of Defence of Ukraine, the Armed Forces of Ukraine, and the State Special Transport Service, as well as by conscripts and reservists during military assemblies, and the conduct of corresponding verifications, shall be ensured in the manner defined by this Order.

Following the registration of information about criminal offenses under Articles 402, 403, 405, 407, 408, and 429 of the Criminal Code of Ukraine in the Unified Register of Pre-Trial Investigations, investigators, inquiry officers, heads of pre-trial investigation units of the State Bureau of Investigation, and prosecutors of specialized military defense prosecution offices are obliged to notify, in writing, the respective command authorities of the Military Law Enforcement Service in the Armed Forces of Ukraine.

By the 5th day of each month, the management bodies of the Military Law Enforcement Service in the Armed Forces of Ukraine must provide the head of the corresponding pre-trial investigation body of the SBI's territorial office with a reconciliation act in two copies. This act includes information on criminal offenses committed by servicemen, employees of the Ministry of Defense of Ukraine, the Armed Forces of Ukraine, and the State Special Transport Service, as well as conscripts and reservists during military assemblies, along with the results of their pre-trial investigations. (*Order of the Prosecutor General's Office, the State Bureau of Investigation, and the Ministry of Defense of Ukraine "On the exchange of information between the Prosecutor's Office, the State Bureau of Investigation, and the Military Law Enforcement Service of the Armed Forces of Ukraine regarding offenses committed by servicemen, employees of the Ministry of Defense of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service, conscripts and reservists during military training, as well as conducting relevant reconciliations," 2024*).

According to V.V. Topchii, the choice of the form of cooperation depends on the nature of the investigative or operational-search situation arising during criminal proceedings or operational-search activities and is determined by the investigator, who initiates and exercises procedural control over it (Topchii, 2014).

In accordance with the Law of Ukraine *On Operational and Investigative Activities* (paras. 1 and 2 of Article 10), materials obtained through operational and investigative measures may serve as grounds and reasons for initiating pre-trial investigations and for obtaining factual data that may be used as evidence in criminal proceedings (*Law of Ukraine On Operational and Investigative Activities*, 1992).

During the investigation of military criminal offenses, the general goal is to fulfill the objectives of criminal proceedings as outlined in Article 2 of the Criminal Procedure Code of Ukraine. This overarching goal is

achieved through resolving intermediate, or so-called "tactical," tasks—an operational and criminalistic term—which may include establishing specific circumstances of a crime, identifying the offender and/or accomplices, collecting sufficient evidence, etc.

It is evident that the authorized units tasked with countering military crimes do not operate in isolation. Therefore, in the course of their professional activities, they interact with other entities pursuing similar or related objectives, in particular operational units.

An analysis of practical experience reveals that one of the problematic areas in cooperation is the *internal* interaction between the operational and investigative units of the SBI. According to the requirements of the *Criminal Procedure Code of Ukraine*, there are specific limitations on the activities of operational unit staff at the pre-trial investigation stage. As stipulated in Article 41 of the CPC, they may conduct investigative (search) actions and covert investigative (search) actions only upon written instruction from an investigator, inquiry officer, or prosecutor (*Criminal Procedure Code of Ukraine*, 2012).

Moreover, the majority of operational-search measures (OSMs) and covert investigative actions (CIAs) are carried out directly by operational personnel upon instruction from an investigator or prosecutor. In some cases, the investigator merely forwards the information obtained by operational officers to the prosecutor without examining the collected materials. There are frequent instances when, in order to expedite the process, operational officers draft motions for conducting OSMs and CIAs on behalf of the investigator. Thus, it is reasonable to agree with the opinion of R.V. Osukhovskyi that the term "operational activity" today is no longer synonymous with "rapid" or "swift" (Osukhovskyi, 2022).

The statutory grounds for the interaction between the operational and investigative units of the State Bureau of Investigation (SBI) are as follows: a) the common purpose and objectives of the operational and investigative units; b) the equal legal force of procedural acts prepared by operational and investigative officers—namely, the protocols of procedural actions drawn up by operational personnel carry the same evidentiary value as those compiled by investigators; c) the need to utilize the capacities of operational units during the conduct of covert investigative (search) actions (CISAs).

S.M. Kniaziev provides an insightful interpretation by distinguishing the interaction between operational and investigative units along the lines of their activities, namely: procedural and organizational (non-procedural) forms of cooperation (Kniaziev, 2019).

We support the view of scholars that the foundation of interaction between operational and investigative units of the SBI in the context of combating military criminal offenses lies in the norms of the *Criminal Procedure Code of Ukraine*, while other legislative and subordinate acts only detail certain aspects of such interaction.

An analysis of the CPC of Ukraine shows that the term *interaction* appears only in Article 571, "Establishment and Activities of Joint Investigation Teams." However, interaction is implicitly addressed in other provisions of the CPC of Ukraine, including:

1. regulations on the execution of individual procedural actions upon request from competent authorities of foreign states within the framework of international cooperation (Article 4 and Chapter IX of the CPC of Ukraine);

2. during the exercise of procedural supervision over the pre-trial investigation by the prosecutor (Article 36 of the CPC);

3. when assigning the conduct of investigative (search) actions and CISAs to the relevant operational units (Articles 40, 40-1, and 41 of the CPC), among others (*Criminal Procedure Code of Ukraine*, 2012).

In the course of the study, it was found that the procedural forms of interaction (regulated by the *Law of Ukraine On Operational and Investigative Activities* and the CPC of Ukraine) include:

– providing assistance to the investigator in conducting investigative (search) and covert investigative (search) actions (Article 40 of the CPC);

– instructions and orders from the investigator regarding the performance of CISAs (Articles 40 and 246 of the CPC);

– documenting and transmitting the results of CISAs to the investigator or prosecutor (Article 252 of the CPC).

Such cooperation is conditioned upon the existence of legal grounds and preconditions for the conduct of these actions, namely:

– the inability to obtain information about a military criminal offense and the identity of the perpetrator by other means;

– the conduct of CISAs exclusively in serious or especially serious military crimes (although locating a radio-electronic device may also be allowed in other types of crimes);

– the conduct of CISAs based solely on a ruling of an investigating judge, except for locating a radio-electronic device, which may be initiated, in urgent cases, pursuant to

Article 250 of the CPC, based on a resolution by the investigator approved by the prosecutor.

Organizational (non-procedural) forms of interaction (those provided by departmental regulations) include:

– coordinated action within investigation task forces (ITFs);

– joint planning of covert investigative (search) actions;

– exchange of operationally significant information (including the use of criminalistics and operational records);

– joint use of forensic and operational-technical tools;

– consultations;

– coordination of covert investigative (search) actions;

– joint analysis of the causes and conditions contributing to the commission of the crime, and discussions of preventive measures;

– mutual support using available resources and personnel;

– exchange of professional experience;

– participation of operational and investigative unit heads in briefings and analyses of CISAs;

– joint issuance of analytical reviews and methodological recommendations based on the results of CISAs; – development of proposals for regulations aimed at improving cooperation between operational units and pre-trial investigation bodies in countering military criminal offenses.

4. Conclusions

To summarize, the forms of interaction between operational units and pre-trial investigation bodies in combating military criminal offenses represent coordinated and joint activities based on legislative and subordinate regulatory acts (including departmental instructions). These activities are carried out under the guiding and organizational role of the operational officer and involve a clear distribution of competences, functions, powers, and mutual obligations. The ultimate aim is to achieve the objectives of criminal justice.

The forms of interaction are differentiated depending on the goals and tasks, the actors involved (operational unit personnel, investigators), and the specific measures and actions undertaken.

As a result of the study, it is proposed to develop a **Guideline on the Interaction between the State Bureau of Investigation, Pre-trial Investigation Bodies, and the Military Law Enforcement Service**, which would define interaction as being implemented at both **strategic** and **tactical** levels.

– The **strategic level** entails organizing the implementation of state policy in the field of combating military crimes, eliminating the causes and conditions of their occurrence, and improving the legal framework for addressing military offenses.

– The **tactical level** includes the detection, documentation, prevention, solving, and investigation of military crimes.

References

Chaplynskyi, K. O. (2022). Problematic issues of interaction of investigative and operational units of the National Police of Ukraine during the investigation of criminal offenses. *Visnyk LDUVS im. E. O. Didorenka*, (4), 247–258. (in Ukrainian)

Kniaziev, S. M. (2019). Interaction of an investigator with an employee of an operational unit in criminal proceedings. *Pidpryiemnytstvo, hospodarstvo i pravo*, (11), 295–301. (in Ukrainian)

Kovalenko, V. V., Moisieiev, Ye. M., Tatsii, V. Ia., & Shemshuchenko, Yu. S. (2010). *Mizhnarodna politseiska entsyklopediia* [International Police Encyclopedia]. Kyiv: Atika. (in Ukrainian)

Criminal Procedure Code of Ukraine: Law of Ukraine No. 4651-VI of April 13, 2012. (2012). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17 (in Ukrainian)

Order of the Prosecutor General's Office, the State Bureau of Investigation, and the Ministry of Defense of Ukraine No. 25/60/99 of February 9, 2024 "On the exchange of information between the prosecutor's office, the State Bureau of Investigation and the Military Law Enforcement Service of the Armed Forces of Ukraine regarding offenses committed by servicemen, employees of the Ministry of Defense of Ukraine, the Armed Forces of Ukraine and the State Special Transport Service, conscripts and reservists during the training, as well as conducting relevant reconciliations." Retrieved from https://zakon.rada.gov.ua/laws/show/v0025905-24#Text (in Ukrainian)

Osukhovskyi, R. V. (2022). Directions for improving interaction when documenting the creation of paramilitary or armed formations not provided for by law. *Yurydychnyi naukovyi elektronnyi zhurnal*, (9), 518–522. (in Ukrainian)

Pchelina, O. V. (2015). On the concept and essence of interaction during the investigation of crimes in the field of official activity. *Jurnalul juridic national: teorie şi practică*, (1), 167–172. (in Ukrainian)

Pchelina, O. V. (2020). Interaction of the investigator and forensic inspectors during the pre-trial investigation of criminal offenses. *Visnyk Chernivetskoho fakultetu Natsionalnoho universytetu "Odeska yurydychna akademiia"*, (1), 107–111. (in Ukrainian)

Priadko, O. O. (2023). The concept of interaction during the investigation of war crimes. *Teoretychni pytannia yurysprudentsii i problemy pravozastosuvannia: vyklyky XXI stolittia*, (1), 78–80. (in Ukrainian)

Strategic Program of the State Bureau of Investigation for 2017–2022. (2017). Retrieved from https://dbr.gov.ua/sites/default/files/2018-04/program17-20_web.pdf (in Ukrainian)

Topchii, V. V. (2014). Interaction of pre-trial investigation bodies and operational units as part of investigative and operational groups. *Yurydychnyi visnyk*, (4), 138–143. (in Ukrainian)

Vasylynchuk, V. I. (2014). Interaction of operational units of the Ministry of Internal Affairs of Ukraine with law enforcement agencies of foreign states in the field of combating crimes related to human trafficking. *Naukovyi visnyk NAVS*, (3), 228–242. (in Ukrainian)

Law of Ukraine "On the State Bureau of Investigation" No. 794-VIII of November 12, 2015. (2015). Retrieved from https://zakon.rada.gov.ua/laws/show/794-19#Text (in Ukrainian)

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

Law of Ukraine "On Military Law Enforcement Service in the Armed Forces of Ukraine" No. 3099-III of March 7, 2002. (2002). Retrieved from https://zakon.rada.gov.ua/laws/show/3099-14#Text (in Ukrainian)

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ФОРМИ ВЗАЄМОДІЇ ПІДРОЗДІЛІВ ДЕРЖАВНОГО БЮРО РОЗСЛІДУВАНЬ З ОРГАНАМИ ДОСУДОВОГО РОЗСЛІДУВАННЯ ТА ВІЙСЬКОВОЮ СЛУЖБОЮ ПРАВОПОРЯДКУ ПІД ЧАС ПРОТИДІЇ ВІЙСЬКОВИМ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ

Анотація. ***Мета.*** Метою статті є визначення форм взаємодії підрозділів державного бюро розслідувань з органами досудового розслідування та військовою службою правопорядку під час протидії військовим кримінальним правопорушенням. ***Результати.*** Військовими кримінальними правопорушеннями визнаються кримінальні правопорушення проти встановленого законодавством порядку несення або проходження військової служби, вчинені військовослужбовцями, а також військовозобов'язаними та резервістами під час проходження зборів. Наголошено, що термін «взаємодія» несе дуже багато смислових навантажень. Це пояснюється як складністю та багатозначністю даного терміну, так і різноманітністю аспектів його вивчення. Спільною рисою майже всіх наведених визначень поняття «взаємодія» є те, що автори тлумачать взаємодію як узгоджену діяльність, спрямовану на досягнення мети, виконання завдань або досягнення результату. ***Висновки.*** Зроблено висновок, що форми взаємодії оперативних підрозділів з органами досудового розслідування під час протидії військовим кримінальним правопорушенням являє собою спільну узгоджену діяльність, засновану на законах і підзаконних нормативних актах (відомчих інструкціях), при керівній та організуючій ролі оперативного працівника, з розподілом компетенції, функцій, повноважень, взаємних обов'язків, яка направлена на вирішення завдань кримінального судочинства. Форми взаємодії диференційовані залежно від мети і завдань, суб'єктів (працівники оперативних підрозділів, слідчі) та конкретних заходів та дій. В процесі дослідження запропоновано розробити Інструкцію про взаємодію органів Державного бюро розслідувань з органами досудового розслідування та військовою службою правопорядку у якій визначити, що взаємодія здійснюється на стратегічному і тактичному напрямах. Стратегічний напрям передбачає організацію реалізації державної політики у сфері боротьби з військовими злочинами, усунення причин і умов їх існування, удосконалення правової бази боротьби з військовими злочинами. Тактичний включає в себе виявлення, документування, припинення, розкриття та розслідування військових злочинів.

Ключові слова: Державне бюро розслідувань**,** органи досудового розслідування, військові злочини.

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THE CONTENT OF PUBLIC OVERSIGHT AS A FUNDAMENTAL FUNCTION OF CIVIL SOCIETY AND AN OBJECT OF ADMINISTRATIVE AND LEGAL REGULATION

Abstract. ***Purpose.*** The purpose of this article is to formulate the foundations for ensuring effective and result-oriented public oversight as a fundamental function of civil society and as an object of administrative and legal regulation. ***Results.*** Public oversight is defined as the purposeful activity of members of the public (natural persons – citizens of Ukraine, foreign nationals; and legal entities – public organizations, representatives of institutions and enterprises), aimed at supervising the adherence of public authorities to legality, discipline, protection of human rights and freedoms, and the exercise of the powers vested in them. One of the key tasks of the theoretical framework of administrative law science is to overcome terminological inaccuracies, eliminate vagueness and definitional uncertainty. At the same time, the formulation of authorial definitions is often impossible without correlating similar or identical terms. Thus, within the scope of this section, it is necessary, in our opinion, to analyze and compare the concept of "public oversight", particularly the main scientific approaches of domestic and foreign scholars, with other related categories. Such related concepts include social oversight, civil oversight, public control, etc. The process of correlating similar or identical concepts makes it possible to establish interrelationships, connections, or, conversely, differences, which, in turn, stimulates a deeper analysis of the studied phenomena and the identification of their essential characteristics and features. ***Conclusions.*** Based on the analysis of public oversight as a fundamental function of civil society, the following conclusions are drawn: the concept of "oversight" forms the theoretical basis for defining and identifying the characteristics of public oversight; public oversight as an object of administrative and legal regulation should be understood as the purposeful activity of members of the public (natural persons – citizens of Ukraine, foreign nationals; and legal entities – public organizations, representatives of institutions and enterprises), aimed at supervising the adherence of public authorities to legality, discipline, protection of human rights and freedoms, and the exercise of the powers vested in them. Ensuring effective and result-oriented public oversight is a necessary precondition for state development, as restricting citizen participation may lead to the lack of accountability of public authorities.

Key words: public oversight, the public, oversight activity, subjects of public oversight, accountability mechanism, public authorities, local self-government bodies.

1. Introduction

In general terms, public oversight is understood as a form of civic activity exercised by various public organizations, initiative groups, and individual actors for the purpose of supervising and monitoring the compliance of public authorities and local self-government bodies–as well as other non-governmental institutions entrusted with the performance of public functions–with the principles of legality, discipline, and the protection of the rights and legitimate interests of citizens.

It should be noted that oversight–including public oversight–can be fully regarded as one of the most important and effective means of ensuring legality. A modern democratic society cannot function without a coordinated and multi-actor system of public oversight in the field of public administration and the management of state affairs. The involvement of diverse subjects of public oversight primarily means ensuring and guaranteeing such principles of public administration as openness, transparency, publicity, and efficiency, which today are fundamental to its functioning.

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For Ukraine, as a relatively young state in an active stage of development and consolidation, the issue of public oversight remains particularly relevant. This is due to numerous factors, the most significant of which is the state's conscious aspiration–manifested through its key governmental institutions– for autonomy and independence from various forms of societal influence.

From scientific, legal, public, and political perspectives, public oversight remains a topical and widely debated issue in modern Ukraine. Despite the lack of adequate and specific legal regulation, the concept of public oversight is interpreted quite broadly in all of the aforementioned domains, which typically complicates its correct and precise understanding, and more importantly, its practical application.

Given that the topic of public oversight in the doctrine of administrative law is both extensive and, at the same time, insufficiently and unclearly regulated at the legislative level, it is appropriate to determine how scholars conceptualize this category, particularly when considering public oversight as an object of administrative and legal regulation. Indeed, among contemporary domestic scholars, the issue of interpreting and defining the content of public oversight is far from settled, and ongoing academic discourse continues to seek a definitive formulation and identification of its essential legal characteristics.

General issues of public oversight have been addressed in the scientific works of O. Andriiko, I. Holosnichenko, V. Horsheniov, A. Dolhopolov, M. Kelman, V. Kolpakov, O. Muzychuk, T. Nalyvaiko, O. Poklad, S. Stetsenko, Yu. Shemshuchenko, among others. The study of the category of oversight in the sphere of public administration has also been the subject of research by leading domestic administrative law scholars, such as V. Averyanov, Yu. Bytiak, V. Harashchuk, L. Hordiienko, D. Luchenko, A. Melnyk, O. Muzychuk, N. Nyzhnyk, O. Obolenskyi, and O. Sushynskyi, among others.

2. The Etymological Origin of the Term "Control"

In light of the above, it is considered appropriate to begin the analysis of the concept of *public oversight* with an examination of its etymological origin, in order to gain a more comprehensive and profound understanding of the term. According to the *Comprehensive Explanatory Dictionary of the Ukrainian Language*, the term "control" is defined as follows:

1. verification of compliance of a controlled object with established requirements;

2. verification, monitoring of the activity of someone or something, oversight over someone or something;

3. an institution or organization that carries out oversight or verification of someone or something;

4. inspectors (*Busel, 2005*). The derived verb "to control" is defined as "to verify someone or something."

An analysis of this dictionary interpretation of the term "control" reveals that the definitions lack several critical attributes that would fully reflect the meaning of the concept, namely: the identification of deficiencies or deviations from established requirements; correction of shortcomings or inefficiencies; imposition of liability; and the identification of the correlation between the prescribed standards and the actual state of affairs. All existing definitions provided by the dictionary offer merely evaluative criteria of control as a certain process. Moreover, the latter two definitions simply refer to the subjects involved in this activity.

It is worth emphasizing that the term *control* is the subject of study in numerous academic disciplines and fields, and can therefore justifiably be regarded as a multidisciplinary, multifaceted, and polysemic phenomenon. Scholars attempt to interpret and conceptualize it from the perspectives of sociology, philosophy, political science, law, management theory, and others. From the legal perspective, jurisprudence approaches the notion of control in a manner closest to its philological understanding. The *Legal Encyclopedia* defines *control* (from the French *contrôle* – inspection, from Old French *contrerole* – a list with a duplicate used for verification) as *the verification of compliance with laws, decisions, etc.*It is considered one of the most important functions of public administration. According to the object, subject, and scope, it is classified into state, departmental, supra-departmental, industrial, and other types of control (*Shemshuchenko, 2001*).

The *Glossary of Terms and Concepts in Public Administration* defines public oversight as one of the mechanisms of citizen participation in public governance and the supervision of governmental bodies, as well as an important factor in ensuring legality in public administration, without which democracy cannot exist (*Malynovskyi, 2005*). The *Political Science Dictionary* provides the following definition: control (public oversight) is a type of social control exercised by associations of citizens and by individual citizens over the compliance of state

bodies, cooperative and public organizations, enterprises, institutions, and public officials with the requirements of the Constitution and the laws of Ukraine (*Holovatyi & Antoniuk, 2005*).

An analysis of specialized literature demonstrates the existence of a significant number of scholarly approaches to the understanding of public oversight within the legal doctrine. On the one hand, this suggests that the category has been studied in depth; on the other hand, it points to a lack of unified understanding and interpretation. In our view, the formulation of unified and optimal approaches to understanding the concept, legal nature, essence, and main features of public oversight will provide the basis for establishing effective civic supervision over the activities of specialized anti-corruption bodies. Through oversight, deficiencies, shortcomings, and deviations from established norms may be identified, as well as the reasons behind them and possible solutions to rectify the detected issues. It may be argued that oversight is a management function that facilitates the detection of errors in order to take corrective actions. This is done to minimize deviations from standards and ensure that the stated objectives of an organization are achieved in the desired manner.

According to A. Tarasov, *control is a means of obtaining information about the life of society as a whole, about the political, economic, and social processes taking place within the state, and about the activities of its authorities and administrative institutions* (*Tarasov, 2002*). The core element of oversight is the ability to obtain information about the controlled entity. As V. Averyanov maintains, control must be recognized as a function of the state, since it is the primary actor performing the oversight function in society. Control is, on the one hand, a means of verifying the correctness of the state's actions and policies, and on the other, a mechanism for evaluating the outcomes of administrative activity at various stages of its implementation (*Averyanov, 1998*). V. Harashchuk, considering oversight as a distinct function of public administration, emphasizes that *control is inspection, as well as observation conducted for the purpose of preventing undesirable occurrences, detecting, averting, and halting unlawful behavior by individuals or institutions*(*Harashchuk, 2002*).

The second component of the term *public oversight* is the adjective *public*, which is derived from the words *hromada*(community) and *hromadskist* (the public). According to the *Comprehensive Explanatory Dictionary of the Ukrainian Language*, *public* (*hromadskyi*) is defined as:

1. relating to a community (*hromada*);
2. arising or occurring in society or relating to it; social;
3. pertaining to or belonging to the entire community or society; collective;
4. voluntarily serving various aspects of community life;
5. inclined to social interaction; sociable, companionable (*Busel, 2005*).

At the same time, *community* (*hromada*) is defined as:

6. a group of people united by common status, interests, etc.;
7. an association of people pursuing specific common goals; an organization;
8. in Ukraine and Belarus – a rural land-based association, as well as the meeting of its members;
9. an organization of Ukrainian liberal-bourgeois intelligentsia in the 1860s–1890s (*Busel, 2005*).

3. Principles of Legal Regulation of Public Oversight

An essential component of our research lies in defining the concept of *public oversight* as a coherent legal category, which is impossible without establishing its normative regulation. Unfortunately, to date, the term does not possess a unified and unequivocal definition, either in legal doctrine or at the legislative level.

For example, the Basic Law of Ukraine (Constitution of Ukraine, 1996) refers to *oversight* only occasionally (e.g., oversight of product quality and safety, parliamentary oversight, etc.), and does not provide any definition of the term. We share the view of those scholars who consider Article 3 of the Constitution of Ukraine as the starting point for defining such an administrative and legal category as public oversight. This provision stipulates that the state, through its institutions established by the people, is accountable to the individual for its activities (Zhukrovskyi, 2014).

It is important to note that various legal provisions addressing the definition and regulation of public oversight in specific sectors can also be found in other legislative acts of Ukraine, such as the Laws of Ukraine "On Citizens' Appeals," "On Access to Public Information," "On Information," "On Local Self-Government," "On Associations of Citizens," "On Scientific and Scientific-Technical Activities," "On Scientific and Scientific-Technical Expertise," "On Consumer Rights Protection," and others. However, these legislative acts lack a consistent approach to understanding public oversight as an administrative and legal category and as an object of administrative and legal regulation.

A more detailed discussion of the legal regulation of public oversight in general, and in relation to specialized anti-corruption bodies in particular, will be addressed in the following subsection.

To date, no specific legislation directly regulating public oversight as a legal institution has been adopted in Ukraine. Only a few legislative initiatives have attempted to address this issue, such as the Draft Law of Ukraine "On Public Oversight," prepared by Member of Parliament S. Kyrychenko, and another version of the same title proposed by S. Tihipko. An analysis of these drafts shows that the aim was to establish, at the legislative level, the definition and principles of public oversight, its key areas of implementation, a list of oversight actors, procedural rules for its execution, and a mechanism of accountability for non-compliance or improper fulfillment of lawful public demands.

The first draft defines public oversight as the organizationally structured activity of Ukrainian citizens aimed at verifying the compliance of oversight objects (state authorities, local self-government bodies, enterprises, institutions, organizations, their officials, and business entities regardless of their legal form or ownership) with the Constitution of Ukraine, national legislation, and other normative legal acts, as well as with state discipline (Draft Law of Ukraine on Public Control, 2008). The author of the second draft defines it as the activity of oversight subjects focused on supervising, verifying, and evaluating the activities of oversight objects for compliance with Ukrainian legislation and societal interests (Draft Law of Ukraine on Public Control, 2014).

An analysis of these proposed definitions reveals a lack of consensus on defining the actors of public oversight (individual citizens or public associations), as well as its main purpose (supervision, verification, and evaluation of the activities of oversight objects for compliance with national legislation and public interest; compliance with the Constitution and laws of Ukraine; or supervision of the legality of activities of state and local government bodies and their officials). Moreover, the definitions fail to clearly identify not only the subjects but also the objects of public oversight. A more detailed analysis of oversight actors, based on the existing draft laws, will be provided in subsequent sections.

Legal doctrine includes a wide array of research dedicated to public oversight. For instance, T. Nalyvaiko defines public oversight as an organizational and legal form of voluntary association of citizens aimed at satisfying and protecting their personal and collective legal, social, economic, creative, age-related, ethno-cultural, and other shared interests (Nalyvaiko, 2010). S. Shestak describes public oversight as the control exercised by citizens and their voluntary associations to ensure the legality and transparency of state functioning and to foster stable and effective interaction between the state and the population (Shestak, 2009). Another contemporary Ukrainian researcher, I. Skvirskyi, defines public oversight as public activity aimed at inspection or observation for the purpose of identifying, preventing, or stopping unlawful actions, decisions, or inaction by public administration actors. In his view, public oversight is a specific institutional and value-based structure that ensures the relative stability of relations and interactions within the framework of state–society social dynamics (Skvirskyi, 2013).

Thus, based on the analysis of doctrinal approaches and selected legislative initiatives, it can be concluded that public oversight should be understood as the purposeful activity of members of the public (natural persons–citizens of Ukraine, foreign nationals; and legal entities–public organizations, institutional and corporate representatives), aimed at supervising the adherence of public authorities to legality, discipline, the protection of human rights and freedoms, as well as the exercise of their delegated powers.

One of the important tasks of the theoretical component of administrative law science is to eliminate terminological inaccuracies, remove ambiguity, and clarify definitional uncertainty. In most cases, formulating precise authorial definitions is not possible without correlating similar or identical terms. Therefore, within this subsection, we deem it necessary to analyze and compare the concept of *public oversight*, particularly the main academic approaches developed by domestic and foreign scholars, with other related legal categories. These include *social oversight*, *civil oversight*, and *public (institutional) oversight*. The process of comparing such related or analogous terms makes it possible to identify their mutual relationships, links, or, conversely, distinctions. This, in turn, stimulates a more in-depth analysis of the studied phenomena, their essential characteristics, and distinctive legal features.

The clarification of legal terminology should begin with the comparison of the term *public oversight* with the broader category of *social oversight*. In contemporary research, *social oversight* is unquestionably considered an interdisciplinary concept studied within such fields as philosophy, sociology, political science,

jurisprudence, legal philosophy, and sociology of law.

From the standpoint of political science, *social oversight* is understood as a society's capacity, rooted in the principles of democracy, to simultaneously act as both the object of governance by the state (i.e., subject to state control) and the subject of governance (i.e., through public oversight), including self-regulation (Arabadzhyiev, 2013). In legal scholarship, O. Danylyan distinguishes between broad and narrow understandings of *social oversight*. In its broad sense, it represents a set of mechanisms within a social system through which self-organization and self-preservation are ensured by establishing and maintaining a normative order. This is achieved by applying models of behavior, including values, legal and moral norms, administrative directives, customs, traditions, and others. In the narrow sense, it is a collection of means and methods employed by society to respond to deviant behavior in order to reduce or eliminate it (Danylyan, 2009).

When comparing the concepts of *social* and *public oversight*, most scholars agree that public oversight constitutes one of the forms of social oversight exercised by citizen associations and individuals. It is viewed as an important means of realizing democracy and engaging the population in the governance of society and the state (Melnyk, Obolenskyi, Vasina, Hordiienko, 2003).

Thus, a general conclusion may be drawn: social oversight is broader in both substance and scope than public oversight. The relationship between the two is that of the whole and the part; public oversight represents only one component of the broader category of social oversight.

The next related concept to be addressed is *civil oversight*. Ukrainian legislation currently recognizes the concept of *democratic civil oversight*, which is defined in the Law of Ukraine "On National Security of Ukraine" (21 June 2018) as a set of legal, organizational, informational, personnel-related, and other measures conducted in accordance with the Constitution and laws of Ukraine. These measures are designed to ensure the rule of law, legality, accountability, and transparency of security and defense sector bodies and other institutions whose activities involve the lawful restriction of human rights and freedoms. It also supports their effective operation, performance of assigned functions, and contributes to strengthening national security (On the National Security of Ukraine: Law of Ukraine, 2018).

Legal doctrine offers different approaches to distinguishing between *public* and *civil oversight*. Some scholars argue that the distinction is rather conditional, or even non-existent. According to this viewpoint, civil (public) oversight is understood as a social phenomenon whereby civil society participates in determining the state's domestic and foreign policy directions, resolving socially significant issues at all levels, and monitoring the implementation of these policies (Melnyk, Obolenskyi, Vasina, Hordiienko, 2003).

O. Selivanova holds that while *public* and *civil oversight* are similar in nature, they are not identical. The term *public* is linked to a collective of individuals united by territorial, cultural, or other unifying factors, while *civil* is derived from the Greek *politēs* (citizen), itself formed from *polis* (city), and denotes a *resident of the city*. Therefore, the subject of public oversight is often depersonalized, representing a collective interest. Conversely, *civil oversight* implies a high degree of subject personalization, where the individual is consciously engaged in exercising control over the functioning of public authorities (Hulyev, 2001).

In our opinion, a distinction does exist between *civil* and *public oversight*, primarily in terms of the actors involved. In the context of *civil oversight*, the principal actors are often military or security institutions, and the primary objective is to oversee and correct the functioning of the state's defense-related structures.

Finally, the correlation between *public oversight* and *institutional public oversight* is another area actively discussed among modern Ukrainian and foreign scholars. For instance, M. Baranov sees the essence of public (institutional) oversight in establishing mechanisms for public communication between civil society and institutional authority in the process of drafting, promoting, and adopting legislative and executive decisions (Baranov, 2007).

According to V. Kravchuk, public (institutional) oversight is a system of organizational and legal forms that ensure legality in the activities of public administration, the protection of human rights and freedoms, and the effective fulfillment of tasks and powers by public authorities and local self-government bodies, as well as their officials and employees. Public oversight is classified according to the conducting subject: state, public (civil society), municipal, and international (Kravchuk, 2015).

Therefore, it can be concluded that *public (institutional) oversight* is a vital component of all political and democratic processes within a state and is a prerequisite for the development of civil society. In its essence, public oversight is a complex phenomenon that encompasses both state

and public components – in other words, *public oversight* is a subset or component of the broader category of *institutional public oversight*.

4. Conclusions

Summarizing the results of the study, the following key conclusions can be drawn: the concept of *control* serves as the theoretical foundation for formulating and distinguishing the features of *public oversight*. Public oversight, as an object of administrative and legal regulation, should be understood as the purposeful activity of members of the public (natural persons – citizens of Ukraine and foreign nationals; and legal entities – public organizations, institutional and corporate representatives) aimed at monitoring the compliance of public authorities with the principles of legality and discipline, the protection of human rights and freedoms, and the exercise of the powers vested in them.

Ensuring effective and result-oriented public oversight is a vital prerequisite for the development of the state, as limiting citizen participation may lead to an absence of accountability within the system of public authority. One of the key contemporary directions for the functioning of this institution involves the search for optimal forms and methods for implementing democratic public oversight.

References

Arabadzhyiev, D. Iu. (2013). *Sotsialnyi kontrol, hromadskyi kontrol i hromadskyi monitorynh: do pytannia spivvidnoshennia poniat* [Social control, public control and public monitoring: On the issue of the correlation of concepts]. *Naukovyi chasopys NPU imeni M. P. Drahomanova*, (11), 10–15. (in Ukrainian)

Averianov, V. B. (1998). *Derzhavne upravlinnia: teoriia i praktyka* [State administration: Theory and practice]. Kyiv: Yurinkom Inter. (in Ukrainian)

Baranov, N. A. (2007). *Hromadianski rukhy u Rosii: problemy vzaiemodii* [Civil movements in Russia: Problems of interaction]. *Rosiia ta suchasnyi svit: problemy politychnoho rozvytku*, (1), 377–386. (in Ukrainian)

Busel, V. T. (2005). *Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy* [Large explanatory dictionary of modern Ukrainian language]. Kyiv–Irpin: Perun. (in Ukrainian)

Danylian, O. H. (2009). *Mistse i znachennia sotsialnoho kontroliu u sferi pravovoho vykhovannia* [The place and significance of social control in the sphere of legal education]. *Problemy zakonnosti*, (103), 220–225. (in Ukrainian)

Harashchuk, V. (2002). *Kontrol ta nahliad u derzhavnomu upravlinni: navchalnyi posibnyk* [Control and supervision in public administration: Textbook]. Kharkiv: Folio. (in Ukrainian)

Holovatyi, M. F., & Antoniuk, O. V. (2005). *Politolohichnyi slovnyk* [Political dictionary]. Kyiv: MAUP. (in Ukrainian)

Hulyev, V. E. (2001). *Postdemokratychna derzhavnist: aksiolohichna fenomenolohiia vidchuzhennia* [Post-democratic statehood: Axiological phenomenology of alienation]. *Pravo ta politika*, (5), 4–13. (in Ukrainian)

Konstytutsiia Ukrainy vid 28 chervnia 1996 r. [Constitution of Ukraine of June 28, 1996]. (1996). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text (in Ukrainian)

Kravchuk, V. (2015). *Publichnyi kontrol u derzhavi* [Public control in the state]. *Yurydychnyi visnyk*, (1), 210–215. (in Ukrainian)

Malynovskyi, V. Ia. (2005). *Slovnyk terminiv i poniat z derzhavnoho upravlinnia* [Dictionary of terms and concepts in public administration]. Kyiv: Atika. (in Ukrainian)

Melnyk, A. F., Obolenskyi, O. Iu., Vasina, A. Iu., & Hordiienko, L. Iu. (2003). *Derzhavne upravlinnia: navchalnyi posibnyk* [State administration: A textbook]. Kyiv: Znannia-Pres. (in Ukrainian)

Nalyvaiko, T. V. (2010). *Hromadskyi kontrol v Ukraini yak instytut hromadianskoho suspilstva: teoretyko-pravovyi aspekt*[Public control in Ukraine as an institution of civil society: Theoretical and legal aspect]. Extended abstract of candidate's thesis, Lviv. (in Ukrainian)

Proekt Zakonu Ukrainy pro hromadskyi kontrol № 183 vid 1 chervnia 2008 roku [Draft Law of Ukraine on Public Control No. 183 of June 1, 2008]. (2008). Retrieved from http://webcache.googleusercontent.com/search?q=cache:Bl9eqaMemtwJ:w1.c1.rada.gov.ua/pls/zweb2/webproc34%3Fid%3D%26pf3511%3D9659%26pf35401%3D14368+&cd=1&hl=ru&ct=clnk&gl=ua(in Ukrainian)

Proekt Zakonu Ukrainy pro hromadskyi kontrol № 4697 vid 14 kvitnia 2014 roku [Draft Law of Ukraine on Public Control No. 4697 of April 14, 2014]. (2014). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50646 (in Ukrainian)

Shemshuchenko, Yu. S. (Ed.). (2001). *Yurydychna entsyklopediia* [Legal encyclopedia]. Kyiv: Ukrainska entsyklopediia. (in Ukrainian)

Shestak, S. V. (2009). *Nederzhavnyi kontrol za diialnistiu militsii: teoretyko-pravovyi aspekt* [Non-state control over police activities: Theoretical and legal aspect]. Candidate's thesis, Kharkiv. (in Ukrainian)

Skvirskyi, I. O. (2013). *Hromadskyi kontrol u publichnomu upravlinni: teoretyko-pravovi ta prakseolohichni aspekty*[Public control in public administration: Theoretical, legal and praxeological aspects]. Doctoral thesis, Zaporizhzhia. (in Ukrainian)

Tarasov, A. M. (2002). *Derzhavnyi kontrol: sut, zmist, suchasnyi stan* [State control: Essence, content, current state]. *Zhurnal prava*, (1), 26–36. (in Ukrainian)

Zakon Ukrainy "Pro natsionalnu bezpeku Ukrainy" vid 21.06.2018 № 2469-VIII [Law of Ukraine

"On the National Security of Ukraine" No. 2469-VIII of 21 June 2018]. (2018). Retrieved from https://zakon.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80#Text (in Ukrainian)

Zhukrovskyi, Ya. I. (2014). *Do pytannia pro poniattia ta sutnist hromadskoho kontroliu* [On the concept and essence of public control]. Dnipro: Monolyt. (in Ukrainian)

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ЗМІСТ ГРОМАДСЬКОГО КОНТРОЛЮ ЯК ОСНОВНОЇ ФУНКЦІЇ ГРОМАДЯНСЬКОГО СУСПІЛЬСТВА ТА ОБ'ЄКТУ АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ

Анотація. ***Мета*** статті полягає в формування засад забезпечення ефективного та результативного громадського контролю, як основної функції громадянського суспільства та об'єкту адміністративно-правового регулювання. ***Результати.*** Визначено, що під громадським контролем слід розуміти цілеспрямовану діяльність представників громадськості (фізичних осіб – громадян України, іноземців; та юридичних осіб – громадських організацій, представників установ і підприємств), яка полягає у нагляді за дотриманням органами державної влади законності, дисципліни, захистом прав і свобод людини, а також виконанням наданих їм повноважень. Одним із важливих завдань теоретичної складової науки адміністративного права потрібно визначити подолання будь-яких термінологічних неточностей, усунення нечіткості та дефінітивної невизначеності. При цьому формулювання авторських визначень у більшості випадків не є можливим без співвідношення схожих чи тотожних термінів. Так, зокрема, в межах даного підрозділу, на нашу думку, слід проаналізувати та співставити поняття «громадський контроль», а саме: основні наукові підходи вітчизняних і зарубіжних дослідників, з іншими суміжними категоріями. До таких суміжних понять у подальшому ми віднесемо: соціальний контроль, цивільний контроль, публічний контроль тощо. Процес співвідношення суміжних, тотожних понять дозволяє встановити взаємні відношення, зв'язки, або, навпаки, відмінності, що, у свою чергу, стимулює поглиблений аналіз досліджуваних явищ, виявлення їх сутнісних характеристик, ознак тощо. ***Висновки.*** За результатами аналізу громадського контролю, як основної функції громадянського суспільства, зроблено наступні висновки: поняття «контроль» є теоретичною основою для формулювання поняття та виокремлення ознак громадського контролю; під громадським контролем як об'єктом адміністративно-правового регулювання слід розуміти цілеспрямовану діяльність представників громадськості (фізичних осіб – громадян України, іноземців; та юридичних осіб – громадських організацій, представників установ і підприємств), яка полягає у нагляді за дотриманням органами державної влади законності, дисципліни, захистом прав і свобод людини, а також виконанням наданих їм повноважень. Забезпечення ефективного та результативного громадського контролю є необхідною запорукою розвитку держави, оскільки обмеження участі громадян може призвести до безконтрольності публічної влади.

Ключові слова: громадський контроль, громадськість, контрольна діяльність, суб'єкти громадського контролю, механізм відповідальності, органи державної влади, органи місцевого самоврядування.

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ON THE CHARACTERISTICS OF THE LEVELS OF IMPLEMENTATION OF THE ADMINISTRATIVE AND LEGAL MECHANISM OF MOBILIZATION PREPAREDNESS

Abstract. ***Purpose.*** The purpose of this article is to provide a comprehensive characterization of the levels at which the administrative and legal mechanism of mobilization preparedness is implemented. ***Results.*** The article emphasizes that the administrative and legal mechanism of mobilization preparedness is a complex and multifaceted phenomenon that operates across various levels. Based on an analysis of academic perspectives, current legislation, and implementation practices, the author identifies the following key levels of implementation of this mechanism: (1) national; (2) regional; (3) local; and (4) site-specific (object) level. It is noted that state policy represents the deliberate activity of public authorities aimed at ensuring the proper functioning of the national system of preparedness for potential emergencies of a technogenic, natural, or military nature. The essence of this policy lies in the coordinated application of legal, organizational, managerial, economic, and other instruments, which enable timely and effective responses to challenges related to national defense and security. ***Conclusions.*** The article concludes that it is most appropriate to distinguish four key levels in the implementation of the administrative and legal mechanism of mobilization preparedness: (1) the **national level**, where the normative and legal framework for the relevant activities is developed, and the foundations of state policy in the fields of defense and national security – including mobilization preparedness – are established; (2) the **regional level**, where mechanisms of mobilization preparedness are implemented within a particular oblast (region) through the activities of regional military state administrations (military administrations); (3) the **local level**, which involves engaging local self-government bodies in addressing mobilization preparedness issues, including the identification of mobilization resources (human, material, technical, etc.) and the notification of the population about potential threats (particularly relevant for frontline territories); and (4) the **site-specific (object) level**, where individual enterprises, institutions, and organizations are prepared and equipped to carry out tasks related to mobilization preparedness.

Key words: levels, implementation, administrative and legal mechanism, mobilization preparedness.

1. Introduction

Today, ensuring the effective functioning of the administrative and legal mechanism of mobilization preparedness is of critical importance. This is due to the fact that this mechanism: firstly, is aimed at safeguarding the state's defense capability under conditions of armed aggression, as well as ensuring stability in the event of other emergencies of natural or technogenic origin; secondly, provides for the timely deployment of the Armed Forces of Ukraine and other military formations to perform defense-related tasks; thirdly, enables the preparation of the economy and society for full and uninterrupted functioning under wartime conditions, including the conversion of enterprises to the production of defense-related goods; fourthly, ensures the organization of state governance; and fifthly, creates the conditions for the formation, accumulation, and preservation of mobilization resources – human, material, financial, technical, and others.

Given these considerations, it is important to emphasize that the administrative and legal mechanism of mobilization preparedness is a complex and multifaceted phenomenon implemented at various levels – the analysis of which constitutes the focus of this research.

Certain issues related to the functioning of the administrative and legal mechanism of mobilization preparedness have been explored in scholarly works by D.M. Bielov,

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Yu.M. Bysaha, P.B. Volotivskyi, O.P. Kutovyi, O.Yu. Savynets, Yu.A. Shevchuk, Ye.Yu. Yakovchuk, among others. However, despite the considerable theoretical contributions in this field, the question of the levels at which the administrative and legal mechanism of mobilization preparedness is implemented remains largely underexplored in academic literature.

Therefore, the purpose of this article is to provide a detailed characterization of the levels of implementation of the administrative and legal mechanism of mobilization preparedness.

2. Functioning of the Administrative and Legal Mechanism of Mobilization Preparedness

First and foremost, it is necessary to focus on the characterization of the levels at which this mechanism functions. In this context, the **national level** deserves particular attention, as it is at this level that the **normative and legal framework** for implementing mobilization preparedness is formed.

Yu.A. Shevchuk rightly points out that administrative and legal support for mobilization preparedness and mobilization itself constitutes one of the most important tasks of public authorities, the fulfillment of which is aimed at the implementation of legislation with the ultimate goal of strengthening the state's defense capability. The role of legal acts in regulating the process of mobilization preparedness and mobilization cannot be overstated, as they serve as the fundamental factor on which the entire system of mobilization management must be built (Shevchuk, 2024).

It is also crucial, within the scope of the present issue, to note that the **development and implementation of state policy** in the field under consideration takes place precisely at the national level. I. Petrenko argues that state policy is the activity of state authorities in governing and directing society based on unified goals, principles, and methods. This includes the development, legislative approval, and implementation of state-targeted programs in various spheres of public life aimed at solving pressing problems or meeting the needs of society. A significant aspect of state policy lies in the structuring of interests among different social groups and the search for compromise between them, since the ultimate decision must serve the public good to the greatest extent possible (Petrenko, 2011).

I.O. Kresina has observed that state policy represents a system of purposeful measures aimed at addressing specific societal problems, satisfying public interests, and ensuring the stability of the country's constitutional, economic, and legal order. In the process of formulating state policy, the primary role is played not by the state itself, but by society – its diverse problems, interests, values, and priorities. Their connection is expressed through the process of legitimacy, which is particularly evident today. In light of the fundamental rethinking of the role and tasks of the state in relation to society – whereby the state is no longer viewed as a self-sufficient institution of domination but as a tool for serving public interests – state policy can no longer be assessed solely by the criterion of legality. It is widely recognized that legality does not always equate to justice or the rule of law (Kresina, 2006).

It is worth referencing the viewpoint of **Ye.Yu. Iakovchuk**, who, in the course of examining the conceptual definition of state policy in the field of mobilization, arrived at a number of insightful conclusions. According to the author, the key features of this scientific category include the following:

First, state policy is a **targeted course or direction of state activity** aimed at solving nationally significant tasks and goals that meet the interests of society, correspond to the functions of the state and public authorities, and influence the quality and regularity of people's lives.

Second, state policy is expressed through a system of **special, complex, large-scale operations and measures** of an economic, legal, managerial, law enforcement, fiscal, and other nature.

Third, it is implemented by **state authorities empowered by Ukrainian legislation**, using the state's financial and other resources. In certain cases, local self-government bodies may also participate in the implementation of state policy when delegated some functions and powers of state authorities.

Fourth, state policy possesses its own **legal structure and foundation**; its formation and implementation are carried out according to established legal principles and on the basis of a broad normative framework.

Fifth, state policy has a **structured administrative and legal mechanism** for its formation and implementation (Iakovchuk, 2023).

Based on these premises, the author concludes that **state policy in the field of mobilization** is a **targeted, legally substantiated and regulated course of comprehensive state activity**, carried out by authorized public authorities and, in certain cases, by local self-government bodies. This activity involves the implementation of legal, financial-economic, organizational-administrative, supervisory and other measures aimed at creating conditions

for and directly executing mobilization preparedness and mobilization across the territory of Ukraine (Iakovchuk, 2023).

Therefore, in the context of the present study, **state policy** should be understood as a **purposeful activity of public authorities** aimed at ensuring the proper functioning of the system that prepares the state for possible emergencies of technogenic, natural, or military origin. The essence of this policy lies in the coordinated application of legal, organizational, managerial, economic, and other tools that enable timely and effective responses to challenges related to national defense and security.

Thus, the **significance of state policy in the implementation of the administrative and legal mechanism of mobilization preparedness** lies in the following:

1. It defines the **priorities and directions** for the development of the mobilization preparedness system;
2. It creates the **conditions for optimal allocation and use** of financial, material, and human resources during periods of mobilization readiness;
3. It ensures the **effective interaction** of mobilization preparedness actors at all levels and across all domains;
4. It guarantees that mobilization measures are carried out **within the legal framework**, in full compliance with the Constitution and a wide range of legislative and subordinate legal acts.

3. Regional and Local Levels of Implementation of the Administrative and Legal Mechanism of Mobilization Preparedness

The next level to be distinguished, in our opinion, is the **regional level** of implementation of the administrative and legal mechanism of mobilization preparedness. Mobilization preparedness at the regional level in Ukraine constitutes a crucial component of the national system for ensuring defense capability and national security. It is carried out through the **coordinated activities** of regional and local state administrations, law enforcement agencies, and other relevant bodies.

At the regional level, mobilization preparedness involves **planning, organizing, and controlling the implementation of measures** related to staffing military formations, forming specialized units, preparing territories for defense, and deploying strategically important infrastructure facilities.

A clear example of regional state administrations' engagement in mobilization preparedness is the **"Program for Ensuring Mobilization Training and Defense Work in Ivano-Frankivsk Region for 2023–2027."** The aim of this Program is to ensure **state sovereignty and independence of Ukraine**, maintain the combat and mobilization readiness of the Armed Forces and other military formations, and, in particular, to create appropriate conditions for conducting mobilization activities and preparing for territorial defense. The Program also seeks to ensure the readiness of state authorities and local self-government bodies, all components of the military organization, law enforcement agencies, civil protection (civil defense) bodies, as well as the population and territory of the region for participation in defense (Decision of the Regional Council on approval of the Program for ensuring mobilization training and defense work in Ivano-Frankivsk region for 2023–2027, 2022).

The implementation of the Program's measures will contribute to solving resource-related challenges in areas where there is a **shortage of state budget allocations**, and will facilitate the proper conduct of mobilization training, the establishment of a reliable military registration system, the accumulation of high-quality mobilization resources, the execution of territorial defense tasks, and the improvement of mobilization training and mobilization procedures in state authorities, local self-government bodies, enterprises, institutions, and organizations within the region. It also encompasses the **preparation of citizens for national resistance** and the **organization of defense** of settlements in Ivano-Frankivsk region (Decision of the Regional Council..., 2022).

Therefore, **mobilization preparedness at the regional level holds strategic importance**, as security-related challenges are often felt more acutely and urgently at this level. Consequently, the effectiveness of state policy in the sphere of mobilization largely depends on the **organization and readiness** of regional authorities to take **rapid action** in crisis situations.

The next level is the **local level**. During the period of martial law, the **village, settlement, or city mayor** of a territorial community, on whose territory no active hostilities are taking place and where no decision has been made to establish a military administration, is authorized–**exclusively for the implementation of martial law measures**–to make decisions (with obligatory notification of the head of the relevant regional military administration within 24 hours) regarding the following (Law of Ukraine "On the Legal Regime of Martial Law," 2015):

1. The **removal of illegally placed temporary structures** on communal land plots,

including those installed but not commissioned in accordance with legislative procedures;

2. The **inspection of buildings and structures damaged by hostilities**. Such inspections must be carried out in accordance with the Law of Ukraine "On Regulation of Urban Development Activities";

3. The **dismantling of buildings and structures** that, based on the aforementioned inspections, are determined to be structurally unsafe and pose a threat to human life (excluding defense and special-purpose facilities, cultural heritage sites, and objects governed by the Law of Ukraine "On the Use of Nuclear Energy and Radiation Safety").

Orders regarding the dismantling of such buildings and structures must be entered into the **Unified State Electronic Construction System** in accordance with the procedure established by the Cabinet of Ministers of Ukraine (Law of Ukraine "On the Legal Regime of Martial Law," 2015).

The final level to be considered is the **local (object-based) level**. According to the Law of Ukraine *"On Mobilization Training and Mobilization"*, in particular **Section IV**, the obligations of enterprises, institutions, organizations, and citizens regarding mobilization training and mobilization are clearly defined. Moreover, the Law stipulates that:

"Enterprises, institutions, and organizations that are executors of mobilization tasks (orders) related to the production of goods shall conclude contracts (agreements) with enterprises, institutions, and organizations that are manufacturers (co-executors) of component products, as well as suppliers of material and technical resources and raw materials." (Law of Ukraine *On Mobilization Training and Mobilization*, 1993)

It is further emphasized that:

"Enterprises, institutions, and organizations may not refuse to conclude contracts (agreements) for the fulfillment of mobilization tasks (orders), provided that their capabilities, taking into account mobilization deployment and the resources allocated to them, enable them to fulfill these mobilization tasks (orders)." (Law of Ukraine *On Mobilization Training and Mobilization*, 1993)

4. Conclusions

The analysis conducted allows us to reasonably distinguish four key levels of implementation of the administrative and legal mechanism of mobilization training:

1. **National level**, at which the formation of the regulatory and legal framework for relevant activities takes place, along with the development of the foundations of state policy in the field of defense and national security, and consequently, the implementation of mobilization training.

2. **Regional level**, where the implementation of mobilization training mechanisms is carried out within a particular region through the activities of regional military state administrations (military administrations).

3. **Local level**, at which local self-government bodies are involved in addressing issues related to mobilization training. This includes the identification of mobilization resources–human, material, technical, etc.–as well as notifying the population about potential threats (particularly relevant in frontline areas).

4. **Local (object-based) level**, at which enterprises, institutions, and organizations are prepared and ensured to be capable of fulfilling tasks related to mobilization training.

References

Iakovchuk, Ye. Yu. (2023). *Do problemy vyznachennia poniattia derzhavnoi polityky u sferi mobilizatsii* [On the problem of defining the concept of state policy in the sphere of mobilization]. *Pravo ta derzhavne upravlinnia*, (4), 439–444. (in Ukrainian).

Kresina, I. O. (2006). *Polityka, pravo i vlada v konteksti transformatsiinykh protsesiv v Ukraini: Monohrafiia* [Politics, law and power in the context of transformation processes in Ukraine: Monograph]. Instytut derzhavy i prava im. V. M. Koretskoho NAN Ukrainy. (in Ukrainian).

Petrenko, I. (2011). *Sutnist derzhavnoi polityky ta derzhavnykh tsilovykh prohram* [The essence of state policy and state target programs]. *Viche*, (10), 23–25. (in Ukrainian).

Rishennia Ivano-Frankivskoi oblasnoi rady pro zatverdzhennia Prohramy zabezpechennia mobilizatsiinoi pidhotovky ta oboronnoi roboty v Ivano-Frankivskii oblasti na 2023–2027 roky vid 07 hrudnia 2022 r. № 559-18/2022 [Decision of the Ivano-Frankivsk Regional Council on approval of the Program for ensuring mobilization training and defense work in Ivano-Frankivsk region for 2023–2027 dated December 7, 2022 No. 559-18/2022]. (2022). *orada.if.ua*. Retrieved from https://orada.if.ua/decision/559-18-2022/ (in Ukrainian).

Shevchuk, Yu. A. (2024). *Pravovi zasady administratyvno-pravovoho zabezpechennia mobilizatsiinoi pidhotovky ta mobilizatsii v Ukraini* [Legal principles of administrative and legal support of mobilization training and mobilization in Ukraine]. *Akademichni vizii*, (30), 1–13. (in Ukrainian).

Zakon Ukrainy *Pro mobilizatsiinu pidhotovku ta mobilizatsiiu* vid 21 zhovtnia 1993 r. № 3543-XII [Law of Ukraine *On Mobilization Training and Mobilization* dated October 21, 1993 No. 3543-XII]. (1993). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/3543-12/conv#Text (in Ukrainian).

Zakon Ukrainy *Pro pravovyi rezhym voiennoho stanu* vid 12 travnia 2015 r. № 389-VIII [Law of Ukraine *On the Legal Regime of Martial Law* dated May 12, 2015 No. 389-VIII]. (2015). *rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/389-19/conv#Text (in Ukrainian).

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ДО ХАРАКТЕРИСТИКИ РІВНІВ РЕАЛІЗАЦІЇ АДМІНІСТРАТИВНО-ПРАВОВОГО МЕХАНІЗМУ МОБІЛІЗАЦІЙНОЇ ПІДГОТОВКИ

Анотація. ***Мета*** статті полягає у наданні характеристиці рівням реалізації адміністративно-правового механізму мобілізаційної підготовки. ***Результати.*** У статті акцентовано увагу на тому, що адміністративно-правовий механізм мобілізаційної підготовки є складним та багатоаспектним явищем, яке реалізується на різних рівнях. Спираючись на аналіз наукових поглядів вчених, норм чинного законодавства та практики його реалізації, виділено наступні ключові рівні реалізації адміністративно-правового механізму мобілізаційної підготовки: 1) загальнодержавний; 2) регіональний; 3) місцевий; та 4) локальний (об'єктний) рівень. Визначено, що державна політика представляє собою цілеспрямовану діяльність органів державної влади, яка орієнтована на забезпечення належного функціонування системи підготовки держави до можливих надзвичайних ситуацій техногенного, природного та воєнного характеру. Сутність такої політики полягає в узгодженому застосуванні правових, організаційних, управлінських, економічних та інших засобів, які дозволяють своєчасно і ефективно реагувати на виклики, що стосуються обороноздатності та національної безпеки. ***Висновки.*** Зроблено висновок, що найбільш доцільно виділити чотири ключові рівні реалізації адміністративно-правового механізму мобілізаційної підготовки: 1) загальнодержавний, на якому відбувається формування нормативно-правової основи здійснення відповідної діяльності, а також створення основ державної політики у сфері оборони, забезпечення національної безпеки, а відтак і здійснення мобілізаційної підготовки; 2) регіональний рівень, на якому відбувається реалізація механізмів мобілізаційної підготовки в рамках області, що забезпечується через діяльність військових обласних державних адміністрацій (військових адміністрацій); 3) місцевий рівень, в межах якого відбувається залучення органів місцевого самоврядування до вирішення питань здійснення мобілізаційної підготовки, що включає визначення мобілізаційних ресурсів: людських, матеріально-технічних, тощо, а також здійснюється оповіщення населення про можливі загрози (зокрема це стосується прифронтових територій); 4) локальний (об'єктний) рівень, в рамках якого відбувається підготовка підприємств, установ, організацій, забезпечення їх готовності до виконання завдань, пов'язаних із мобілізаційною підготовкою.

Ключові слова: рівні, реалізація, адміністративно-правовий механізм, мобілізаційна підготовка.

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FEATURES OF THE FUNCTIONING OF THE PROSECUTION AUTHORITIES IN FRANCE AND GERMANY AND THE OPTION OF THEIR IMPLEMENTATION IN UKRAINE

Abstract. ***Purpose.*** The aim of this article is to analyze the experience of the functioning of the prosecutorial institution in Germany and France, and to outline the potential for its implementation in Ukraine. ***Results.*** From an organizational and structural perspective, the prosecution service in France is a centralized system. It operates through the Prosecutors General, General Advocates and their deputies at the appellate and cassation courts, as well as the Prosecutors of the Republic and their deputies at courts of major jurisdiction, all of whom have the status of magistrates within the judiciary. The structure of the prosecution service corresponds to that of the court system. The prosecution is viewed as a body safeguarding public interest, which is why some positions, such as Assistant Prosecutor General, are referred to as General Advocates. A notable characteristic of the development of the prosecutorial institution in both France and Germany is that, having initially emerged as an instrument for persecuting opponents of the ruling regime, it has gradually transformed into one of the key mechanisms for upholding the rule of law and public order by assisting the courts in the administration of justice. ***Conclusions.*** It is concluded that there exist various models for organizing prosecution authorities across Europe, none of which is ideal. Nevertheless, many modern democratic states have achieved significant results in ensuring the high quality and effective operation of this institution, recognizing it as a key instrument in upholding the rule of law, legality, and public order. Therefore, the experience of countries such as France and Germany deserves special attention in the context of reforming the prosecution system of Ukraine. Specifically, the French model of incorporating the prosecution service into the executive branch–namely the Ministry of Justice–relieves the prosecution of excessive administrative burdens, allowing it to focus solely on legal functions such as criminal prosecution and supporting the judiciary in the administration of justice. In turn, the German model demonstrates a well-structured approach to the training and staffing of prosecution bodies, which enables a reduction in personnel without compromising the quality and efficiency of prosecutorial functions.

Key words: prosecution service, executive authorities, judiciary, legal status, prosecutors, civil servants, powers.

1. Introduction

An essential stage in the reform of any state institution involves defining the conceptual foundations upon which the process of transformation in a particular area of public relations will be based. The term *concept* (from Latin *conceptio* – perception) refers to a system of notions regarding certain phenomena or processes; a way of understanding or interpreting events; the core idea behind any theory. The term is also used to denote the main idea in scholarly, artistic, political, or other types of human activity (Shynkaruk, 2002).

In legal encyclopedic literature, a legal concept is interpreted as a guiding idea or viewpoint on a particular legal phenomenon. It serves as an important tool for the development of legal science and scientifically grounded state-legal construction (Shemshuchenko, 1998).

It is evident that the reform of the prosecution service in Ukraine also requires the identification of its conceptual foundations, as these foundations reflect the direction of the reform process, the priorities, ideas, views, and beliefs underlying the proposed or ongoing changes. These foun-

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dations characterize the design and intent to be implemented during the reform.

In recent years, Ukraine has firmly pursued integration into the European Union, which requires the alignment of key public and state institutions with European standards and requirements. This also applies to the organizational and legal principles governing the structure and operation of the prosecution service. Accordingly, there is a need to study international, including European, experience in reforming prosecution institutions and their transformation into their current forms.

Analyzing the formation of the organizational and legal foundations of prosecutorial activity in leading countries of the world and the transformations they have undergone will help identify important elements necessary for defining the conceptual framework of reforming the domestic prosecution service.

The purpose of this article is to analyze the functioning of the prosecution service in Germany and France and propose potential avenues for implementing their elements in the Ukrainian context.

2. The Origins and Formation of the Prosecutorial Institution in France

The conceptual foundations of the prosecution service, in its modern understanding, originated in France. The French prosecutorial institution was established in the 14th century as a mechanism for asserting royal authority. At that time, the prosecution service was directly subordinate to the King of France. King Philip IV the Fair is considered the founder of the European model of the prosecution service, having codified its legal status and functions. On March 25, 1302, he issued an ordinance on the appointment of permanent royal prosecutors who would operate at parliaments (courts) in Paris, Tours, and Rouen, as well as at the offices of bailiffs and seneschals (local judges). French monarchs selected the most qualified lawyers to represent royal interests in court and entrusted them with specific important cases. For this reason, until the abolition of the monarchy, prosecutors in France were referred to as "men of the king." Upon fulfilling these ad hoc or permanent assignments, royal representatives would return to their legal practice (Sukhonos, 2001).

At the outset of its existence, the French prosecution service performed primarily punitive functions–that is, it was responsible for criminal prosecution of individuals deemed dangerous by the royal authority. N. Kholodnytskyi notes that the scope of activity of royal prosecutors continuously expanded and extended beyond purely legal matters. The prosecutor, in the fullest sense of the term, served as the king's eyes, through whom the monarch could monitor the proper functioning of the entire state apparatus. A significant portion of prosecutorial work consisted of oversight and supervisory functions, again carried out in the interest of the crown. In particular, in fulfilling these responsibilities, the Prosecutor General, while defending the interests of the royal crown, ensured that no nobleman usurped titles, interfered with trade or industry, or unlawfully exercised authority. The prosecutor monitored appointments of royal officials, assessing their qualifications to ensure that the king's interests were not compromised. Eventually, the prosecutor's responsibilities expanded to include supervision over the functioning of seigniorial and ecclesiastical courts (Kholodnytskyi, 2014).

Thus, as V.V. Sukhonos rightly points out, the French prosecution service initially functioned purely as a representative of the king's interests in court. The scholar emphasizes that only later–significantly later–did it evolve into an institution tasked with protecting the interests of the state and society at large (Sukhonos, 2007). A similar view is held by A.M. Dolhopolov, who notes that as long as the king remained the owner of domains and the suzerain of his vassals, his prosecutor was nothing more than a fiscal agent of the crown. However, once royal authority came to embody and represent the public interest, the private interests of the monarch began to align with those of the state, and the royal prosecutor, once a mere agent of the former, became an institution of the latter (Dolhopolov, 2015).

During the 16th to 18th centuries, the French prosecution service underwent a series of reforms and transformations that strengthened it as a powerful state institution with clearly defined duties and a broad scope of activity (Dolhopolov, 2015). It is worth noting that at a certain point in French history–namely during the French Revolution–the activities of the prosecution service were temporarily suspended (Dolhopolov, 2015). However, its operations were soon restored due to the pressing need for legal oversight and criminal prosecution, which attests to the prosecution service's vital role as a law enforcement institution.

Between 1789 and 1819, France adopted nearly 30 general and special laws regulating the legal status and functions of the prosecution service. Of particular importance among these were the Law on the Judiciary of 1801 and the Code of Criminal Procedure of 1808 (Niroda, 2015), which established the prosecution service as a crucial mechanism of the rule-of-law state (Sukhonos, 2001).

As a result of these reforms and transformations, the main areas of responsibility of the French Republican prosecution service became the following:

1. **In criminal matters** – initiating criminal proceedings, supervising the activities of judicial police and investigating judges, participating in and supporting public prosecution in court proceedings, and ensuring the enforcement of judicial decisions;

2. **In civil matters** – representing the interests of the state or performing the role of an impartial advisor and oversight authority with the right to issue opinions;

3. **In the sphere of judicial-administrative activity** – exercising general oversight over the judiciary, the legal profession, and correctional institutions, as well as maintaining judicial statistics (Sukhonos, 2007).

During the period of the First Empire, the French prosecution service acquired features similar to those of its modern form. It was headed by the Minister of Justice. Prosecutors General operated at the cassation and appellate courts, supported by several associates, who were divided into assistants and General Advocates – the latter presented oral arguments in court. Prosecutors of the appellate courts were directly subordinate to the Minister of Justice, while the prosecution office of the Court of Cassation held a special position. Prosecutors of the Republic were assigned to courts of first and higher instance and reported to the prosecution office of the appellate court (Niroda, 2015).

In the current French system, the prosecution service is part of the **executive branch** and is subordinated to the Ministry of Justice. The organization and functions of the prosecution service, as well as the procedural status of prosecutors, are regulated by the French Code of Criminal Procedure, the Code of Judicial Organization, and **Ordonnance No. 58-1270 of December 22, 1958**, on the organic law concerning the status of the judiciary (*Ordonnance N° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature*, 1958). Prosecutorial officers are closely affiliated with the judiciary (both are referred to as *magistrats*) as they receive identical training and frequently transition between prosecutorial and judicial positions during their careers. Prosecutors are appointed by decree of the President of the Republic upon the recommendation of the High Council for the Judiciary (*Omelchuk & Klitynska, 2016*).

From an organizational and structural perspective, the French prosecution service is a centralized system. It operates through Prosecutors General, General Advocates, and their deputies at the appellate and cassation courts, as well as through Prosecutors of the Republic and their deputies at high courts of first instance, all of whom hold the status of magistrates. The structure of the prosecution service mirrors that of the judiciary. It is regarded as an institution that defends public interest, which is why some positions – for example, assistants to Prosecutors General – are referred to as General Advocates. Each appellate court is served by a Prosecutor General and their assistants. The Prosecutor General is directly subordinate to the Minister of Justice and is authorized to issue instructions to all prosecutors within the jurisdiction of the appellate court. The Prosecutor General also supervises all judicial police personnel within their area. They personally or through their deputies represent the prosecution in the appellate court and the court of assizes.

Prosecutors of the Republic operate within courts of first instance and high instance, as well as within correctional tribunals, and conduct criminal prosecution in all matters falling within their territorial jurisdiction. They or their deputies represent the prosecution in most assize and correctional courts and, when necessary, also in police courts. They are subordinate to the Prosecutors General at appellate courts. The French prosecution service is responsible for supporting the public prosecution in court, ensuring the enforcement of criminal law, overseeing investigative bodies, and coordinating their activities (*Plakhina, 2014*).

L.V. Omelchuk and A.R. Klitynska, in their analysis of prosecutorial organization in European countries, note that under French law, the prosecutor must be immediately informed of all committed crimes and of any individuals detained in order to ensure a fair investigation and the protection of human and civil rights and freedoms. Any victim of an offense may file a complaint with the police or gendarmerie, which is subsequently forwarded to the prosecution office. Alternatively, complaints may be submitted directly to the prosecution. The prosecutor oversees the subsequent investigation, issues instructions regarding the direction of the investigation, and decides whether to bring charges. Where appropriate, they may also decide to terminate criminal proceedings or close the case, in accordance with their powers (*Omelchuk & Klitynska, 2016*).

The powers of French prosecutors also include: monitoring the legality of judicial decisions and their enforcement (*Plakhina, 2014*); implementing state criminal policy as defined by the Minister of Justice; and directing and coordinating local authorities in the implementation of local crime prevention programs (*Omelchuk & Klitynska, 2016*).

Additionally, under French law, prosecutors may participate in civil proceedings. A prosecutor may either intervene in an ongoing civil case – for instance, to provide a legal opinion – or initiate such a case independently by filing a civil claim in court. V.K. Puchynskyi and I.V. Plakhina note that prosecutors may bring civil actions only in cases expressly provided by law. For example, under the French Civil Code, a prosecutor may initiate proceedings in the following cases:

– Declaration of death (*Art. 90*);

– Presumption of absence if a person has not been declared absent (*Art. 112*);

– Declaration of presumed absence (*Art. 122*);

– Imposition of penalties on officials or spouses who married without officially published banns (*Art. 192*);

– Custody arrangements in divorce cases (*Art. 302*);

– Declaration of legal incapacity for persons with mental disorders lacking a spouse or relatives (*Art. 491*);

– Appointment of a guardian for a spendthrift (*Art. 514*);

– Recognition of rights of incapacitated persons or minors arising from donations or wills in their favor (*Art. 1057*);

– Elimination of violations during the formation of a company and changes to its status (*Art. 1839*).

When initiating a civil case, the prosecutor acts as a principal party – the plaintiff. The prosecutor may also join any civil proceedings between private parties to issue an opinion at their own discretion if such intervention is deemed appropriate. In certain legally defined matters – such as changes in an individual's personal legal status – the prosecutor's participation in proceedings is mandatory (*Plakhina, 2014*).

3. Organization and Functioning of the Prosecution Service in Germany

The French model of organizing and operating the prosecution service was later adopted by a number of European countries, including Germany, where this institution was established in 1818 (*Zahynei, Drahan, Yarmysh, 2015*). Its primary purpose was to carry out law enforcement functions, including the initiation of criminal proceedings, bringing and supporting charges in court, and enforcing judicial decisions (*Plakhina, 2014*). The activities of German prosecutors are regulated by the Basic Law (Constitution) of Germany, the constitutions of the federal states (Länder), the German Code of Criminal Procedure of 1877, the German Judiciary Act (*Gerichtsverfassungsgesetz*), administrative orders issued by the Federal Ministry of Justice and by the justice ministries of the Länder, as well as other normative acts (*Zahynei, Drahan, Yarmysh, 2015*).

An interesting feature of the German system is the absence of a standalone law dedicated solely to the prosecution service. Instead, the institutional foundations and operations of this authority are outlined in Chapter 10 of the aforementioned Judiciary Act. In addition, the legal status of prosecutors is determined by federal legislation on public service and civil servants, as well as by relevant legal acts of the Länder, as prosecutors are classified as civil servants. At the same time, in terms of their independence from external influence or pressure while carrying out their professional duties, prosecutors are afforded protections comparable to those of judges. Matters such as prosecutorial jurisdiction over criminal and other cases, representation in court hearings, case assignment plans, managerial responsibility, the authority to sign legal documents, the formation of investigative teams, and other related issues are governed by ministerial orders – for example, the *Directive on the Organization and Operations of the Public Prosecution Office* (*Khovroniuk, 2012*).

Currently, Germany has a Federal Public Prosecutor General at the Federal Court of Justice, 24 prosecution offices at the Higher Regional Courts (Oberlandesgerichte), and 115 prosecution offices at the Regional Courts (Landgerichte). Prosecution offices are established at the level of the Länder courts and are headed by the respective Chief Public Prosecutor. At the higher courts of the Länder, public prosecutor's offices are also established and led by the Land's Prosecutors General. At first-instance courts, prosecution offices are not formally established, although branches of the Länder prosecution services may operate there without having independent legal entity status (*Zahynei, Drahan, Yarmysh, 2015*).

From the outset, the German prosecution service has been institutionally subordinated to the Ministry of Justice, rather than the Ministry of the Interior, in order to reflect "the legal, rather than coercive, will of the state" (*Nevzorov, 2016*). Nevertheless, the Federal Prosecutor General is appointed by the President of Germany with the consent of the Bundestag and exercises their functions under the general supervision of the Federal Minister of Justice. Prosecutors at the higher and regional courts of the Länder are subordinate to the respective state Ministers of Justice (*Zahynei, Drahan, Yarmysh, 2015*). Given the prosecutorial system's subordination to the justice ministries, overall management of the prosecution offices in each Land is exercised by the corresponding state Minister of Justice.

Formally, prosecutors are obliged to comply with general instructions issued by the Minister of Justice. However, as noted by M. Khovroniuk, they often avoid following such instructions in the name of professional independence. When responding to ministerial directions, prosecutors act in accordance with civil service legislation. According to these rules, a prosecutor–like any other civil servant–may submit a reasoned objection to a directive. If the supervisor insists on implementation, the prosecutor is obligated to comply unless the directive would result in

criminal liability. Prosecutors are also required to follow lawful instructions from their superior prosecutors (*Khovroniuk, 2012*).

It is also worth noting that the Federal Prosecutor General does not have authority to issue directives to prosecutors of the Länder and does not exercise administrative oversight over them. This responsibility lies with the Prosecutors General of each Land. In specific cases, however, the Federal Prosecutor General may transfer proceedings from federal jurisdiction to the prosecution services of the Länder or, conversely, assume responsibility for cases from their jurisdiction (*Zahynei, Drahan, Yarmysh, 2015*).

W. Zelter emphasizes that the prosecution service in Germany occupies a unique position. On the one hand, it is an independent organ of criminal justice in relation to the judiciary and is not part of the judicial branch; rather, it exercises judicial functions jointly with the courts to ensure justice. As such, it does not fall under the judiciary as defined by Article 92 of the Basic Law. On the other hand, considering its specific procedural powers, it also cannot be classified as part of the executive. As a state authority responsible for public prosecution, bound by law and, like the courts, obliged to pursue truth and a just verdict, the prosecution service operates within the broader framework of the justice system. Its independence from the judiciary is explicitly established in the Judiciary Act, which states that the prosecution service performs its duties independently of the courts (*§150 of the Judiciary Act*) (*Zelter, 2016*).

The primary sphere of activity of the modern prosecution service in the Federal Republic of Germany lies in the area of criminal prosecution and the enforcement of judgments in criminal cases. A criminal case may be initiated either by the police–who then immediately transfer it to the prosecutor–or directly by the prosecutor. Criminal offenses are primarily investigated by police services under the authority of the federal government or the Minister of the Interior of the respective Land. However, the prosecution service is considered the "master of the investigation" (*Herr des Verfahrens*), regardless of who initiates it. The prosecutor brings formal charges, and judicial proceedings in such cases are conducted with the mandatory participation of a prosecutor as the representative of the state (*Nevzorov, 2016*).

In addition to its prosecutorial powers, the German prosecution service also:

– oversees the execution of court decisions in criminal matters;

– pursues certain public order offenses;

– represents the interests of the state in specific categories of cases–for example, when an individual challenges before a court the decision of the police or municipal authorities to impose a fine or other penalty for a public order violation, the prosecution service acts as the legal representative of the state (*Khovroniuk, 2012*).

A few words should be said about the personnel policy within the German prosecution service. First and foremost, it is important to note that the prosecutorial staff in Germany is significantly smaller than in many other European countries, including Ukraine. The ratio does not exceed 10 prosecutors per 100,000 inhabitants, despite the absence of specialized prosecution offices in the country (*Khovroniuk, 2012*).

In selecting personnel for prosecutorial positions, eight key criteria are applied, which all candidates must meet. Among the most important are:

– the ability to distinguish between justice and injustice,

– awareness of the scope and limits of authority and powers,

– and resilience under pressure.

Compliance with these criteria is assessed during an interview, which includes role-playing scenarios, responses to test questions, and other evaluative methods (*Khovroniuk, 2012*).

M. Khovroniuk notes that despite the rigor of this process, occasional selection errors still occur–about one or two per hundred candidates. Each interview is conducted in the presence of a psychologist, who advises the selection committee, which always includes the Chief Public Prosecutor and/or a presiding judge. However, the psychologist does not directly question the candidate. Each interview lasts approximately two to three hours, allowing for no more than four candidates to be evaluated per day. In addition to passing the interview, candidates must submit standard documentation–such as a medical certificate and a criminal record clearance. Each successful candidate is appointed to a specific position within a particular prosecution office. Upon starting their post, the new prosecutor is assigned to a more experienced colleague who co-signs all procedural documents for a certain period (*Khovroniuk, 2012*).

It is worth emphasizing that the personal qualities assessed during recruitment play a significant role not only in hiring decisions but also in future career advancement within the prosecution service.

Attention should also be drawn to the issue of maintaining disciplinary standards within the prosecution service of the Federal Republic of Germany. Compared to Ukraine, Germany applies a broader range of disciplinary sanctions to prosecutorial staff for committing disciplinary offenses. In Ukraine, the following disciplinary sanctions may be imposed on a prosecutor:

1. reprimand;

2. prohibition, for up to one year, on promotion to a higher-level prosecution office or on appointment to a higher position within the current prosecution office (excluding the Prosecutor General);

3. dismissal from the prosecution service (*Law of Ukraine on the Prosecutor's Office*, 2014).

In Germany, prosecutors may be subject to the following disciplinary measures:

1. warning;
2. fine – up to €2,500;
3. reduction in salary – up to 20% for a period of up to three years;
4. transfer to a lower salary grade;
5. dismissal with forfeiture of a special pension (in which case a regular pension is paid) (*Khovroniuk, 2012*).

Thus, it becomes evident that the prosecution services in France and Germany occupy a distinct place within their respective systems of public institutions. On the one hand, they are organizationally subordinated to the executive branch, specifically the Minister of Justice; on the other, their functional mandate places them closer to the judiciary. This dual nature is also reflected in the legal status of prosecutors: while they are civil servants, they enjoy a number of judicial guarantees, particularly independence from external interference in the performance of their duties. Moreover, the organizational and legal frameworks for training and selecting prosecutors closely resemble those established for the judiciary.

One of the essential characteristics of the development of the prosecution services in France and Germany is that, although they initially emerged as instruments for persecuting political opponents and dissenters, they gradually evolved into key mechanisms for ensuring the rule of law and legal order by supporting the judiciary in the administration of justice. The transformations that have occurred within the prosecution services of both countries have largely aimed to serve this purpose. As a result, they relinquished their general supervisory functions and powers, narrowing their scope of activity to criminal prosecution and the enforcement of judicial decisions. Prosecutorial participation in civil proceedings is strictly regulated by law and remains limited in scope. The functional convergence of the prosecution service with the judiciary has led to the implementation of systems for training and safeguarding prosecutorial independence similar to those designed for national judicial institutions in France and Germany.

4. Conclusions

To conclude, it is evident that various models of organizing the public prosecution service exist across Europe, none of which can be considered ideal. Nonetheless, many modern democratic states have achieved notable success in ensuring a high level of quality and functionality of this institution as a crucial instrument for upholding the rule of law, legality, and public order.

In this regard, the experiences of countries such as France and Germany deserve particular attention and consideration in the context of reforming the prosecution service of Ukraine. Specifically, the French model of integrating the prosecution service into the structure of the executive branch, particularly the Ministry of Justice, relieves prosecutorial bodies of excessive administrative responsibilities and allows them to focus exclusively on legal functions, such as criminal prosecution and assisting courts in the administration of justice. Meanwhile, the German model demonstrates how a well-designed approach to recruitment and personnel training enables the maintenance of a lean prosecutorial staff without compromising the quality or effectiveness of its functional duties.

References

Dolhopolov, A. M. (2015). Vynyknennia ta istorychnyi shliakh rozvytku prokuratury [The emergence and historical development of the prosecutor's office]. *Naukovyi visnyk Natsionalnoho universytetu bioresursiv i pryrodokorystuvannia Ukrainy*, *(232)*, 162–168. (in Ukrainian)

Kholodnytskyi, N. (2014). Zarodzhennia yevropeiskoi kontseptsii prokuratury ta yii retseptsiia u Spoluchenykh Shtatakh Ameryky [The origin of the European concept of prosecution and its reception in the United States of America]. *Visnyk Lvivskoho universytetu. Seriia Yurydychna*, *(59)*, 141–147. (in Ukrainian)

Khovroniuk, M. (2012). Prokuratura po nimetski: zakonu nemaie, a ordnung ye [Prosecutor's office in German: There is no law, but there is Ordnung]. *Tsentr polityko-pravovykh reform*. Retrieved from https://pravo.org.ua/prokuratura-po-nimetsky-zakonu-nemaye-a-ordnung-ye/ (in Ukrainian)

Nevzorov, O. B. (2016). Zarubizhnyi dosvid vyznachennia administratyvno-pravovoho statusu prokuratury [Foreign experience in determining the administrative and legal status of the prosecutor's office]. *Naukovyi visnyk publichnoho ta pryvatnoho prava*, *(1)*, 114–117. (in Ukrainian)

Niroda, M. V. (2015). Henezys orhaniv prokuratury v krainakh romano-hermanskoi pravovoi simi: korotkyi istorychnyi ekskurs [The genesis of prosecutorial bodies in the countries of the Romano-Germanic legal family: A brief historical excursion]. *Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia Pravo*, *(33)*, 93–96. (in Ukrainian)

Omelchuk, L. V., & Klitynska, A. R. (2016). Yevropeiskyi dosvid orhanizatsii orhaniv prokuratury [European experience in organizing prosecutorial bodies]. *Mizhnarodnyi yurydychnyi visnyk*, *(1)*, 199–204. (in Ukrainian)

Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature. (1958). *Venice Commission*. Retrieved from https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)022-f (in French)

Plakhina, I. V. (2014). Osoblyvosti orhaniv prokuratury v zarubizhnykh krainakh [Peculiarities of prosecutor's offices in foreign countries]. *Chasopys Akademii advokatury Ukrainy*, *(4)*, 37–43. (in Ukrainian)

Shemshuchenko, Yu. S. (Ed.). (1998). *Yurydychna entsyklopediia* [Legal encyclopedia]. Kyiv: Ukrainska entsyklopediia. (in Ukrainian)

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

Sukhonos, V. (2001). Vynyknennia i rozvytok instytutu prokuratury [The emergence and development of the institution of the prosecutor's office]. *Pravo Ukrainy*, *(8)*, 103–107. (in Ukrainian)

Sukhonos, V. V. (2007). Istorychno-pravovi peredumovy vynyknennia ta rozvytku instytutu prokuratury v Ukraini [Historical and legal prerequisites for the emergence and development of the institution of the prosecutor's office in Ukraine]. *Visnyk prokuratury*, *(5)*, 100–108. (in Ukrainian)

Zahynei, Z. A., Drahan, V. M., & Yarmysh, O. N. (2015). *Zarubizhnyi dosvid stvorennia ta diialnosti spetsialnykh antykoruptsiinykh orhaniv* [Foreign experience in the creation and operation of special anti-corruption bodies]. Kyiv: Natsionalna akademiia prokuratury Ukrainy. (in Ukrainian)

Zakon Ukrainy pro prokuraturu vid 14 zhovtnia 2014 roku № 1697-VII [Law of Ukraine on the Prosecutor's Office of October 14, 2014 No. 1697-VII]. (2014). *Verkhovna Rada Ukrainy*. Retrieved from https://zakon.rada.gov.ua/laws/show/1697-18#Text (in Ukrainian)

Zelter, V. (2016). *Status prokuratury v Nimechchyni v systemi derzhavnykh orhaniv ta yii povnovazhennia* [The status of the prosecutor's office in Germany in the system of state bodies and its powers]. Kyiv: Natsionalna akademiia prokuratury Ukrainy. (in Ukrainian)

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ОСОБЛИВОСТІ ФУНКЦІОНУВАННЯ ОРГАНІВ ПРОКУРАТУРИ ФРАНЦІЇ ТА НІМЕЧЧИНИ, ТА МОЖЛИВОСТІ ЙОГО ВИКОРИСТАННЯ В УКРАЇНІ

Анотація. ***Метою*** статті є на прикладі аналізу досвіду функціонування інституту прокуратури в Німеччині та Франції запропонувати та можливості його використання в Україні. ***Результати.*** В організаційно-структурному аспекті прокуратура Франції є централізованою системою органів. Вона діє в особі генеральних прокурорів, генеральних адвокатів та їхніх заступників при апеляційному та касаційному судах, прокурорів республіки та їх заступників при судах великої інстанції, що мають статус магістратів судової системи. Структура прокуратури збігається зі структурою судів. Прокуратура розглядається як орган, що захищає інтереси суспільства, тому деякі їх посади, наприклад, помічників генерального прокурора, називають генеральними адвокатами. Однією з суттєвих особливостей становлення й розвиток інституту прокуратури у Франції та Німеччині є те, з`явившись як інструмент переслідування ворогів правлячої влади, незгодних, вона поступово перетворилася на один з ключових засобів підтримки режиму законності та стану правопорядку в державі й суспільстві через сприяння судам у відправленні правосуддя. ***Висновки.*** Зроблено висновок, що на сьогодні у Європі існують різні моделі організації органів прокуратури, жодна з яких не є ідеальною, тим не менш багато сучасних демократичних держава досягли значних результатів у забезпечення високого рівня якості та функціонування даного інституту як одного з ключових інструментів забезпечення верховенства права, законності та правового порядку в суспільстві. У зв'язку з цим, досвід таких країн як Франція та Німеччина заслуговує на особливу увагу та використання в процесі реформування прокуратури України, а саме: за прикладом Франції включення органів прокуратури до складу системи гілки влади, зокрема до складу Міністерства юстиції звільняє органи прокуратури від зайвої організаційно-управлінської роботи та дозволяє сконцентрувати свої зусилля виключно на правовій сфері, зокрема щодо здійснення кримінального переслідування та сприяння судам у відправленні правосуддя; за прикладом Німеччини грамотно вироблений підхід до підготовки та формування кадрового складу органів прокуратури дозволяє суттєво зменшити їх штат без негативних наслідків для якості та ефективності виконання ними свого функціонального призначення.

Ключові слова: прокуратура, органи виконавчої влади, система правосуддя, паровому статусі, прокурорів, державні службовці, повноваження.

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DEFINITION AND CLASSIFICATION OF PERSONAL DATA

Abstract. ***Purpose***. The purpose of the article is to study approaches to defining the concept of personal data, methods and criteria for classifying personal data in order to identify possible ways to improve the legislation of Ukraine on protection of personal data. ***Research methods***. In order to carry out the research, it was necessary to analyze the content of the concept of personal data, its constituent parts, and their combination as a whole by applying the method of analysis and synthesis. The inductive method was used to review the elements of the definition of personal data and personal data classification. The deductive method was employed to form conclusions about the criteria that affect the personal data classification. ***Results***. The scientific approaches to defining personal data, as well as the definition of the relevant concept established in the normative legal acts of Ukraine and the European Union are analyzed in the article. Approaches to classifying personal data in scientific literature and the authors' justification of their positions regarding separation of certain personal data types were examined. Conclusions were made regarding the classification of personal data in accordance with the legislation of Ukraine and the legislation of the European Union. To improve legal regulation, certain changes concerning the definition of "personal data" and the classification of personal data were proposed to the legislation of Ukraine. ***Conclusions***. Due to a rapid informatization of society and development of social relations in the field of personal data processing, there is an urgent need to update the national legislation and bring it in line with modern realities. One of the ways to ensure such an update is to improve the framework of concepts and categories that underlies the legislation of Ukraine on personal data protection and eliminate existing inconsistencies in the legislation.

Key words: personal data; definition of personal data; classification of personal data; identification; special personal data; sensitive personal data.

1. Introduction

Rapid progress in information technologies and digitalization create additional risks for individuals as personal data subjects. The categories of personal data to be collected and processed are constantly expanding. Information about an individual that is collected by websites, computer programs, or mobile applications often includes personal data that is particularly sensitive to the subjects, such as medical data, data about political or religious views, data about racial and ethnic origin, etc. The amount of collected personal data, especially sensitive data, is far from being always appropriate for the purpose of collection. The practice of collecting an unreasonably large amount of information about a person without their knowledge or informed consent is common. Moreover, there are frequent cases of personal data collection for their use for illegal purposes: embezzlement of another's property, deception, fraud, extortion and commission of other criminal or administrative offenses.

In view of the above, the issue of ensuring proper protection of personal data by the state is particularly relevant. One of the ways to ensure such protection is providing a clear definition of the term "personal data", determining its scope, as well as establishing clear criteria for dividing personal data into categories to provide enhanced protection for particularly sensitive categories of personal data. To ensure proper protection of personal data, the national legislation of Ukraine in the field of personal data protection should be improved, in particular, the Law of Ukraine "On Protection of Personal Data" and other laws and by-laws regulating public relations in the relevant field.

Research methods. Several scientific methods were used to fulfill the tasks and achieve the research purpose. Using the method of analysis and synthesis, the components of the concept of "personal data" and their combination in integrity were analyzed. The application of the inductive method made

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it possible to study the constituent parts of the definition of personal data and personal data classifications. The deductive method contributed to the identification of trends that affect approaches to the classification of personal data and general criteria for such classification.

The structure of the research is determined by the tasks and purpose of the research. In order to find ways to improve the legislation of Ukraine concerning the definition and classification of personal data, it is considered necessary to first analyze the content and scope of the term "personal data". After considering the approaches to defining the term "personal data", it seems logical to move on to the issue of personal data classification, analyze the approaches to such classification developed by legal science and enshrined in the legislation of Ukraine and the European Union (EU). Based on the results of the conducted research, conclusions and proposals should be formed regarding the possibilities of improving the legislation of Ukraine in terms of determining personal data and establishing their classification.

2. Definition of personal data

The issue of defining personal data was considered by many domestic scientists. V.M. Bryzhko defines personal data as information about an identified person or a person who can be identified (Bryzhko, 2004, pp. 51, 90). M.I. Sayenko offers a broader and more detailed definition of personal data as data about a living person who is identified or can be identified on the basis of these data and additional information that may reach the person who controls the data, which contain an expression of attitude to this person and an indication of a certain purpose or plans regarding this person by the person who controls the data or another person (Sayenko, p. 103). The basis of these definitions is the concept of identification, understood in legal literature as establishing the identity of objects on the basis of certain signs (Golubovska, Shovkovy, Lefterova, Lazer-Pankiv, Shtychenko, Pysmenna et al., 2012).

Some scientists use other concepts than identification to define personal data. According to G.V. Vynohradova, personal data is a set of documented or publicly announced information about a natural person (Vynohradova, 2006). In our opinion, such definition deprives personal data of an important property - a possibility to identify a person, that is, establishing the identity of the data with the person to whom these data belong. Documented or publicly announced data may be unreliable, which makes it impossible to identify the person to whom they really belong. Identification of a person is a key property of personal data, which allows establishing the ownership of certain personal data to a certain specific person and, accordingly, ensuring the protection of the rights of such a person to his/her personal data by the state. At the same time, it should be taken into account that the possibility of determining the relationship of data to an identified or identifiable person is not based on absolute, but on relative criteria, and today there is no objective standard for assessing this possibility according to legislation (Rupp, Grafenstein, 2024).

Summarizing the most common approaches to defining personal data in science, the following general trends can be identified: 1) personal data is most often defined as information or a set of information about a person; 2) personal data have the property of identification; 3) personal data always have a fixed form and are reflected in a specific source; 4) personal data is a non-exhaustive category; 5) information about a person acquires the legal status of personal data with the start of its processing (Tsyomenko, 2023).

In literature, other terms are sometimes used instead of the term "personal data". A.V. Paziuk uses the term "personalized information", considering it as a type of information that reflects both the individuality of a person and his/her universal human biological and social properties. The author considers the individualized character and the ability to identify a specific person using certain criteria to be the defining features of personalized information (Paziuk, 2004, p. 12). The approach that consists in equating the concept of personal data with the concept of confidential information about a person is also quite common in science (Marushchak, 2007). A similar approach was reflected in the Constitution of Ukraine. Article 32 of the Constitution of Ukraine establishes the basic rules for dealing with confidential information, prohibiting the collection, storage, use and distribution of confidential information about a person without his/her consent, except for a clearly defined and legally established set of exceptions (in the interests of national security, economic well-being and human rights) (Constitution of Ukraine, 1996). In its interpretation of the first and the second part of Article 32 of the Constitution of Ukraine, the Constitutional Court of Ukraine considers that confidential information about a natural person includes data on his/her nationality, education, marital status, religious beliefs, state of health, address, date and place of birth, information about property status. This list is not exhaustive, confidential information about a natural person can also include other personal data (Decision of the Constitutional Court

of Ukraine dated January 20, 2012 No. 2-rp/2012 in the case of the constitutional submission of the Zhashkiv District Council of Cherkasy Region regarding the official interpretation of the provisions of the first and the second part of Article 32, the second and the third part of Article 34 of the Constitution of Ukraine).

The normative definition of the term "personal data" is laid down in the Law of Ukraine "On Protection of Personal Data" and the Law of Ukraine "On Information". The Law of Ukraine "On Protection of Personal Data" defines personal data as information or a set of information about a natural person who is identified or can be specifically identified (Law of Ukraine "On Protection of Personal Data", 2010). The Law of Ukraine "On Information" provides the same definition of personal data, but a significant terminological difference is the use of the wording "Information about a natural person (personal data)" in the mentioned law (Law of Ukraine "On Information", 1992). Thus, in fact, according to the logic of the Law of Ukraine "On Information", the term "information about a natural person" and the term "personal data" have the same content. This leads to narrowing of the term "information about a natural person", since the Law of Ukraine "On Information" defines information as any information and/or data that can be stored on physical media or displayed in electronic form. Accordingly, the definition of the term "information about a natural person" should be broader than the definition of the term "personal data", because the first term refers to any information about a natural person, and the latter term refers exclusively to that information about a person by which a person can be identified. This leads to the fact that the essence of the concept is clarified with the help of a part of the same concept and a logical error called a "circle in the definition" occurs (Gurzhii, Petrytskyi, 2019).

The concept of personal data is also normatively established in European legislation. Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data defines personal data as any information relating to an identified or identifiable individual (Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981). Directive 95/46/EC "On the protection of individuals with regard to the processing of personal data and on the free movement of such data", which has long served as the main legislative act of the EU in the field of personal data protection, and Regulation (EU) 2016/679 of the European Parliament and of the Council (hereinafter - the Regulation), which canceled the relevant directive and replaced it, contain similar definitions of personal data. According to the Regulation, personal data is any information relating to an identified or identifiable natural person. (Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, 2016). Thus, European legislation recognizes the possibility of identifying a person as the main property of personal data. At the same time, Article 4 of the Regulation describes in detail when a person is considered to be identifiable and lists possible identifiers: name, identification number, location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of such a natural person.

It can be concluded from the above that when defining the concept of "personal data" in the Law of Ukraine "On Protection of Personal Data", the Ukrainian legislator generally followed the European experience. At the same time, the definition of personal data provided in the Law of Ukraine "On Personal Data Protection" is not fully consistent with the definition of personal data in the Law of Ukraine "On Information", since the latter definition does not comply with the rules of logic. The Ukrainian legislator should pay attention to the elimination of this discrepancy. In addition, it is considered appropriate to include in the Law of Ukraine "On Protection of Personal Data" an approximate list of information that allows identification of a person (identifiers), as was done in the Regulation.

3. Classification of personal data

The number of cases when personal data is processed is rapidly increasing in modern society. The list of personal data that is processed or may be processed is expanding every day. In the 20th century, the main categories of personal data processed were mostly data in directories, card files or databases on physical media, such as first and last name, identification number, residential address, telephone number. In the 21st century, with the development of technologies, the list of personal data processed on an ongoing basis expanded significantly. Bank card data, biometric data (face, voice, fingerprints), e-mail addresses, mobile phone numbers, online identifiers (cookie files), etc. are processed daily using various technical means, along with data on physical media. Such a complication of social relations in the field of processing personal data and the expansion of their scope requires to

divide personal data into categories to ensure an adequate level of protection of particularly sensitive data categories.

The issue of personal data classification is considered in scientific literature. A quite common approach is to distinguish three main categories of personal data: general, special and sensitive personal data. V.M. Rizak proposes to introduce just such a classification of personal data at the legislative level, enshrining the definition of the relevant categories of personal data in the Law of Ukraine "On Protection of Personal Data". While proposing definitions of general and sensitive personal data, the author does not provide a clear definition of the data that should be considered as special. With regard to special data, the author only notes that these are the data that do not belong to sensitive or general data, while the limits of circulation of these data are determined by the subject himself (Rizak, 2013, pp. 90–94). In our opinion, this classification does not provide sufficiently clear criteria for distinguishing between general and special personal data. The data subject is not always able to determine the limits of the processing of his/her data, and in the event of a change in legislation and expansion of state's access to certain personal data, such data may automatically move from the category of special to the category of general, without any influence, knowledge or consent of the subject. For example, clause 2 of the final and transitional provisions of the Law of Ukraine "On Amendments to the Law of Ukraine "On Protection of the Population from Infectious Diseases" on Prevention of the Spread of the Coronavirus Disease (COVID-19)" No. 555-IX allowed processing a set of personal data without individual's consent for the period of quarantine and within 30 days from the date of its cancellation for the purpose of countering the spread of COVID-19. The law attributed to such set of data, in particular, data on health status, place of hospitalization or self-isolation, surname, first name, patronymic, date of birth, place of residence, work, education (Law of Ukraine "On Amendments to the Law of Ukraine "On Protection of the Population from Infectious Diseases" on preventing the spread of the coronavirus disease (COVID-19)", 2020). Another example is the expansion of the list of personal data to be processed in connection with martial law. The Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Procedure for Processing and Using Data in State Registers for Military Registration and Acquiring War Veteran Status During Martial Law" expanded the list of processed personal data of recruits, conscripts and reservists. A number of data categories have been added to personal data that can be processed without the consent of such subjects, including numbers of means of communication, e-mail addresses, information about education and work experience in a specialty, information about the transfer of a person to the temporarily occupied territory of Ukraine, etc. (Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Procedure for Processing and Using Data in State Registers for Military Registration and Acquiring War Veteran Status During Martial Law", 2024).

There are also other criteria for personal data classification, such as classification based on human perception. According to this criterion, depending on the organ of perception, visual (symbolic, figurative) and acoustic personal data are distinguished, and depending on the way of perception - data that are directly perceived by the senses or data that requires special equipment for processing (Dmytrenko, 2010). Some scientists divide personal data into physical, physiological and relative, while physical and physiological data include gender, DNA, height, weight, blood composition, etc., and relative data include address, place of birth, ethnic origin, social and family status, political views, etc. (Kostruba, Schramm, 2019). A.M. Chernobai offers the division of personal data according to qualitative characteristics into actual data and data of an evaluative nature. In turn, factual data can be true or false, reliable or unreliable, current or outdated. Data of an evaluative nature are divided into substantiated and speculative (Chernobai, 2006). H.J. Schramm and A.V. Kostruba consider it expedient to establish the division of personal data into biological and social data. Under this classification, biological data includes data on gender, year of birth, state of health and other similar data. The authors attribute information about family status, children, education, employment, citizenship, religion, political views, credit history, criminal record and other similar data to social data (Kostruba, Schramm, 2019). Among foreign scientists, there is a proposal to make legal regulation more specific by dividing personal data depending on their properties into three categories: the ability to identify a person (identifiability), sensitivity, and the manner of data origin (Saglam, Nurse, Hodges, 2022).

Having read the positions presented in literature regarding personal data classification, it can be concluded that personal data is a complex category that can be classified simultaneously in several dimensions. Each of the classifications is based on certain characteristics and features of personal data and has certain goals.

In EU legislation, in addition to the general category of personal data, a separate category of personal data with a special level of protection is distinguished - "sensitive" data. Convention No. 108 attributes to this category data on racial origin, political, religious or other beliefs, as well as data related to health or sexual life. Automated processing of such data without legal safeguards is prohibited (Convention for the Protection of Individuals with regard to Automated Processing of Personal Data, 1981). The Regulation attributes to sensitive data about racial or ethnic origin, political opinions, religious or philosophical beliefs, membership in trade unions, genetic and biometric data, data related to health, sex life of an individual or his/her sexual orientation. Thus, one can observe a tendency to expand the list of data recognized as sensitive in Europe. As a general rule, processing of sensitive data is prohibited, except for the exemptions established in paragraph 2 of Article 9 of the Regulation. Such exemptions include explicit consent of the data subject, data processing for protection against claims, the need to fulfill duties in the field of employment, the need to protect the vital interests of the data subject, data processing for medical purposes, data processing for reasons of public interest, as well as for social, scientific, historical and statistical purposes (Regulation of the European Parliament and Council (EU) 2016/679 on the protection of natural persons in connection with processing of personal data and on the free movement of such data, and on the repeal of Directive 95/46/EC (General Data Protection Regulation), 2016).

Unlike the EU legislation, Ukrainian legislation does not clearly divide personal data into categories. At the same time, Article 7 of the Law of Ukraine "On Protection of Personal Data" identifies personal data, the processing of which is prohibited. Such data includes personal data on racial or ethnic origin, political, religious or philosophical beliefs, membership in political parties and trade unions, criminal convictions, data on health, sex life, biometric and genetic data. As it can be seen, in this part, the Ukrainian legislation follows the European approach of distinguishing categories of data that require special protection. The possibilities of processing such data are narrowed down to the legally established range of exceptions listed in Part 2 of Article 7 of the Law of Ukraine "On Protection of Personal Data". These exceptions mostly coincide with the exceptions set out in paragraph 2 of Article 9 of the Regulation.

Thus, based on the analysis of the provisions of the Law of Ukraine "On Protection of Personal Data", two main categories of personal data can be distinguished: 1) general personal data - any information or a set of information about a natural person who is identified or can be specifically identified, except those related to special (sensitive) personal data; 2) special (sensitive) personal data - information or set of information about racial or ethnic origin, political, religious or philosophical beliefs, membership in political parties and trade unions, criminal convictions, data related to health, sex life, biometric or genetic data of a natural person by which he/her is identified or can be specifically identified. In our opinion, enshrining such a classification in the Law of Ukraine "On Protection of Personal Data" would make it possible to strengthen the degree of protection of sensitive personal data and bring the legislation of Ukraine in the field of personal data protection closer to the EU legislation in this part.

4. Conclusions

To ensure the protection of personal data, it is important to form the right approach to definition of personal data and establish a clear classification of personal data in the legislation. In order to improve the level of personal data protection, bring Ukrainian legislation in the field of personal data protection into compliance with EU standards, we offer to:

1. Expand the definition of personal data provided in the Law of Ukraine "On Protection of Personal Data", supplementing it with criteria that allow identification of a person. In this regard, the following definition of personal data should be enshrined in the law: "personal data - information or a set of information about a natural person who is identified or can be specifically identified; a natural person can be identified, in particular, by such identifiers as name, identification number, location data, online identifiers or by factors that determine the physical, physiological, genetic, mental, economic, social or cultural essence of such natural person."

2. Eliminate the inconsistency between the Law of Ukraine "On Protection of Personal Data" and the Law of Ukraine "On Information" in terms of the use of the concepts "personal data" and "information about a natural person" by replacing everywhere in the text of the Law of Ukraine "On Information" the term "information about natural person" with the term "personal data". Thus, in particular, Article 11 of the Law of Ukraine "On Information" will have the title "Personal data", and the definition given in part 1 of this article will be as follows: "Personal data - information or a set of information about a natural person who is identified or can be specifically identified".

3. Divide personal data into two categories: 1) general personal data; 2) special (sensitive)

personal data. Supplement the Law of Ukraine "On Protection of Personal Data" with the concepts of "general personal data" and "special (sensitive) personal data" and define these concepts.

The issue of optimal ways to integrate the updated conceptual and categorical apparatus into Ukrainian legislation, including secondary legal acts, requires further research.

References:

A. Tsyomenko (2023). Personalni dani hromadyan ta yihnia klasyfikatsiia v suchasniy doktryni administratyvnoho prava [Personal data of citizens and their classification in the modern doctrine of administrative law]. Bulletin of Taras Shevchenko Kyiv National University. Military special sciences, 1(53), 41-45. Retrieved from https://miljournals.knu.ua/index.php/visnuk/article/view/1028. DOI: https://doi.org/10.17721/1728-2217.2023.53.41-45 [in Ukrainian].

Bryzhko V.M. (2004). Orhanizatsiino-pravovi pytannia zahysty personalnyh danyh [Organizational and legal issues of personal data protection]: *Candidate's thesis*. Kyiv: Research center of legal informatics of Academy of legal sciences of Ukraine [in Ukrainian].

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Retrieved from https://rm.coe.int/1680078b37

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31995L0046.

Dmytrenko O. A. (2010). Pravo fizychnoi osoby na vlasni personalni dani v tsyvilnomu pravi Ukrainy [The right of an individual to own personal data in the civil law of Ukraine]. *Extended abstract of candidate's thesis*. Kyiv: Research Institute of private law and law of Academy of legal Sciences of Ukraine [in Ukrainian].

Gurzhii T. O. (2019). *Pravovyi zahyst personalnyh danyh [Legal protection of personal data]*. Kyiv: Kyiv National Trade and Economy University. DOI: http://doi.org/10.31617/m.knute.2019-343 [in Ukrainian].

I. O. Golubovska, V. M. Shovkovy, O. M. Lefterova, O.V. Lazer-Pankiv, I. Yu. Shtychenko, Yu. AT. Pismenna et al. *Bagatomovnii Yurydychnyi Slovnyk-Dovidnyk [Multilingual legal dictionary-guide]*. – Kyiv: Kyiv University Publishing and Printing Center, 2012. – 543 p. Retrieved from https://shron1.chtyvo.org.ua/Avtorskyi_kolektyv/Bahatomovnyi_iurydychnyi_slovnyk-dovidnyk.pdf?PHPSESSID=bqad96t6hoil0bm4rmt20403b0 [in Ukrainian].

Konstytutsiia Ukrainy [Constitution of Ukraine] Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text [in Ukrainian].

Marushchak A.I. (2007). *Informatsiine parvo: dostup do informatsii [Information law: access to information]*. KNT [in Ukrainian].

Paiuk A.V. (2004). Mizhnarodno-pravovyi zahyst prava liudyny na pryvatnist personifikovanoi informatsii [International legal protection of human right to privacy of personalized information]. *Extended abstract of candidate's thesis*. Kyiv: Kyiv national University named after T. Shevchenko [in Ukrainian].

Rahime Belen Saglam, Jason R.C. Nurse, Duncan Hodges (2022). Personal information: Perceptions, types and evolution. - Journal of Information Security and Applications, 66, 1-31. Retrieved from https://www.sciencedirect.com/science/article/pii/S2214212622000503. DOI: 10.1016/j.jisa.2022.103163.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj#d1e1489-1-1

Rishennia Konstytutsiinoho sudu Ukrainy vid 20 sichnia 2012 №2-rp/2012 u spravi za konstytutiinym podanniam Zhashkivskoi raionnoi rady Cherkaskoi oblasti shchodo ofitsiinoho tlumachennia polozhen chastyny pershoi, druhoi statti 32, chastyn druhoi, tretoi statti 34 Konstytutsii Ukrainy [Decision of the Constitutional Court of Ukraine dated January 20 2012 No. 2-rp/2012 in the case of the constitutional submission of Zhashkiv district council of Cherkasy region regarding the official interpretation of the provisions of the first and second parts of Article 32 and the second and third parts of Article 34 of the Constitution of Ukraine]. Retrieved from https://zakon.rada.gov.ua/laws/show/v002p710-12#Text [in Ukrainian].

Rizak M.V. (2013). Klasyfikatsiia personalnyh danyh yak neobhidnyi element vedennia efektyvnoi komunikatsii v suspilstvi [Classification of personal data as a necessary element of introducing effective communication in society]. Scientific Bulletin of International Humanitarian University, 6-3(1), 90–94. Retrieved from https://www.vestnik-pravo.mgu.od.ua/archive/juspradenc6-3-1/23.pdf [in Ukrainian].

Sayenko M.I. (2015). Suchasne pravove reguliuvannia informatsiinyh vidnosyn u sferi zahystu personalnyh danyh v Ukraini [Modern legal regulation of information relations in the field of personal data protection in Ukraine], Law and society 3, 103 [in Ukrainian].

Schramm H. J. & Kostruba A.V. (2019). Legal classification of types of information about an individual. *Bulletin of the National Academy of Legal Sciences of Ukraine, 26*, 123–132. DOI: 10.31359/1993-0909-2019-26-1-123

Valentin Rupp & Max von Grafenstein (2024). Clarifying "Personal Data" and the Role of Anonymisation in Data Protection Law: Including and

Excluding Data from the Scope of the GDPR (More Clearly) through Refining the Concept of Data Protection. - Computer Law & Security Review, 52 (2024). Retrieved from https://www.sciencedirect.com/science/article/pii/S0267364923001425. DOI: https://doi.org/10.1016/j.clsr.2023.105932

Vynogradova G. V. (2006) Pravove reguliuvannia informatsiinyh vidnosyn v Ukraini [Legal regulation of information relations in Ukraine], 176. *Kyiv: Justinian* [in Ukrainian].

Zakon Ukrainy "Pro informatsiiy" [Law of Ukraine "On Information"]. Retrieved from https://zakon.rada.gov.ua/laws/show/2657-12#Text [in Ukrainian].

Zakon Ukrainy "Pro vnesennia zmin do deiakyh zakoniv Ukrainy shchodo udoskonalennia poriadku obrobky ta vykorystannia danyh u derzhavnyh reiestrah dlia viiskovoho obliku ta nabuttia statusu veterana viiny pid chas dii voiennoho stanu" [Law of Ukraine "On amendments to certain laws of Ukraine on improving the procedure for processing and using data in state registers for military registration and acquiring war veteran status during martial law"]. Retrieved from https://zakon.rada.gov.ua/laws/show/3549-20#n107 [in Ukrainian]

Zakon Ukrainy "Pro vnesennia zmin do Zakonu Ukrainy "Pro zahyst naselennia vid infektsiinyh hvorob" shchodo zapobihannia poshyrenniu koronavirusnoi hvoroby (COVID-19)" [Law of Ukraine "On amendments to the Law of Ukraine "On protection of the population from infectious diseases" on prevention of the spread of the coronavirus disease (COVID-19)"]. Retrieved from https://zakon.rada.gov.ua/laws/show/555-20#Text [in Ukrainian].

Zakon Ukrainy "Pro zahyst personalnuh danyh" [Law of Ukraine "On protection of personal data"]. Retrieved from https://zakon.rada.gov.ua/laws/show/2297-17#Text [in Ukrainian].

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ВИЗНАЧЕННЯ ТА КЛАСИФІКАЦІЯ ПЕРСОНАЛЬНИХ ДАНИХ

Анотація. ***Мета.*** Метою статті є дослідження підходів до визначення поняття «персональні дані», способів та критеріїв класифікації персональних даних для виявлення можливих шляхів удосконалення законодавства України щодо захисту персональних даних. ***Методи дослідження.*** Для проведення дослідження необхідно було шляхом застосування методу аналізу та синтезу проаналізувати зміст поняття «персональні дані», його складові частини та поєднання їх в цілісності. Індуктивний метод було використано для розгляду елементів визначення персональних даних та класифікації персональних даних. Для формування висновків щодо критеріїв, які впливають на класифікацію персональних даних, було використано дедуктивний метод. ***Результати.*** У статті було проаналізовано розроблені в науці підходи до визначення поняття «персональні дані», а також закріплені в нормативно-правових актах України та Європейського Союзу визначення цього поняття. Досліджено підходи до класифікації персональних даних в науковій літературі, проаналізовано надане авторами обґрунтування їх позицій щодо виокремлення певних видів персональних даних. Зроблено висновки щодо класифікації персональних даних згідно законодавства України та законодавства Європейського Союзу. Запропоновано деякі зміни до законодавства України в частині визначення поняття «персональні дані» та класифікації персональних даних, спрямовані на вдосконалення правового регулювання. ***Висновки.*** В зв'язку з стрімкою інформатизацією суспільства та розвитком суспільних відносин в сфері обробки персональних даних, нагальною потребою є оновлення та приведення у відповідність до сучасних реалій національного законодавства. Одним з способів забезпечити таке оновлення є вдосконалення понятійно-категоріального апарату, що лежить в основі законодавства України щодо захисту персональних даних та усунення наявних неузгодженостей у законодавстві.

Ключові слова: персональні дані; визначення персональних даних; класифікація персональних даних; ідентифікація; спеціальні персональні дані; чутливі персональні дані.

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FEATURES OF DOCUMENT EXAMINATION DURING THE INVESTIGATION OF MISAPPROPRIATION OF BUDGET FUNDS

Abstract. ***Purpose.*** The purpose of the article is to highlight the peculiarities of document examination during the investigation of misappropriation of budget funds. ***Results.*** This scholarly article outlines the specific aspects of document examination in the context of investigating the misappropriation of budgetary funds. It is substantiated that investigative (search) actions aimed at identifying, seizing, and recording forensically relevant information about the circumstances of the criminal offense are of critical importance, as such documents subsequently become the subject of forensic examination. The examination of primary documents is fundamental in investigations involving budgetary offenses. It enables investigators to trace the flow of funds, identify discrepancies, and gather evidence of fraudulent activities. The paper analyzes the views of scholars and current legislation, defining the role and significance of this particular investigative (search) action in the pre-trial investigation of criminal offenses related to violations of budgetary legislation. A list of documents that may indicate the commission of a criminal offense is provided, along with their classification based on various criteria. Particular emphasis is placed on primary documents, the examination of which allows for the establishment of the actual movement of funds, compliance of expenditures with their intended purpose, the presence or absence of procurement procedure violations, actual completion of works or provision of services, and discrepancies between documentary records and the actual use of funds. These are key to proving the objective elements of the offense. The involvement of specialists in the document examination process and their functional role are also emphasized. ***Conclusions.*** The article concludes that the examination of primary documents is foundational in the investigation of criminal offenses related to the use of budgetary funds. It enables investigators to trace the financial flow, detect inconsistencies, and gather evidence of fraudulent activities. Without a thorough review of the relevant documents, it would be nearly impossible to establish a clear picture of how public funds are allocated and spent. Additionally, it is important to consider that during document examination, the investigator may identify individuals involved in the commission of the criminal offense. By analyzing primary documentation, the investigator may identify those who signed the documents, authorized payments, or received funds. All of this directly facilitates the identification of individuals involved in the illicit scheme and helps determine their roles in the committed criminal offense.

Key words: budget funds, pre-trial investigation, investigative (search) actions, budgetary offenses, examination, documents, specialized knowledge, criminal proceedings.

1. Introduction

The generalization of materials related to criminal offenses involving violations of budgetary legislation is invariably linked to documentation; without it, it is impossible to prove the misappropriation of budget funds. Therefore, investigative (search) actions aimed at identifying, seizing, and recording forensically significant information concerning the circumstances of the criminal offense gain particular importance. These documents subsequently become the subject of forensic examination.

The foundation of this scholarly article comprises academic contributions focused on the study of investigative (search) actions and the methodology of investigating economic criminal offenses. Among the key contributors to the field are K.V. Antonov, H.S. Bidniak, V.I. Vasylchuk, A.F. Volobuiev, I.V. Hora, V.V. Darahan, O.O. Dudorov, O.H. Kalman, N.I. Klymenko, Ye.D. Lukianchykov, H.A. Matusovskyi, I.V. Pyroh, O.V. Pchelina, M.V. Saltevskyi, R.L. Stepaniuk, V.V. Tishchenko, K.O. Chaplynskyi,

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S.S. Cherniavskyi, Yu.M. Chornohus, V.Yu. Shepityko, M.H. Shcherbakovskyi, P.V. Tsymbal, and others. At the same time, the research conducted in this area requires updates and refinement to meet the current conditions and challenges.

The purpose of this article is to highlight the specific features of document examination during the investigation of the misappropriation of budgetary funds.

2. Specifics of Examining Primary Documents During Criminal Investigations

In forensic literature, an examination is defined as an investigative (search) action during which the investigator directly studies objects in order to detect traces of a criminal offense, evidence, and circumstances relevant to the criminal proceeding (Klymenko, 2005). At the same time, procedural legislation stipulates that the investigator or prosecutor conducts an examination of the area, premises, objects, documents, and computer data with the purpose of identifying and recording information regarding the circumstances of the commission of a criminal offense (Article 237 of the Criminal Procedure Code of Ukraine, 2012).

Among the various types of examinations conducted in criminal proceedings concerning the misappropriation of budget funds, the examination of documents holds particular significance. An analysis of judicial and investigative practice shows that document examinations were conducted in 64.8% of such cases.

When considering a document as a source of evidence, V.M. Ishchenko defines it as a material object that, in a recorded form, directly reflects information about events and facts of criminal procedural relevance. This information is conveyed through signs readable by a person (either independently or with the aid of technical means), allowing for unambiguous reproduction in the form of images or spoken language, as well as the communication and interpretation of human thought. Such a document must be composed by a specific person, enterprise, institution, or organization; obtained in accordance with the established procedure by investigative authorities or the court; and attached to the materials of the criminal proceeding (Ishchenko, 1997).

Undoubtedly, during the investigation of criminal offenses involving violations of budget legislation, documents such as invoices, financial statements, certificates of completed work, cost estimates, contracts, technical documentation, letters, emails, and messages may confirm the execution of certain business transactions that either never occurred or were carried out on a much smaller scale. These and other documents are often used to conceal the unlawful use of funds and to create the appearance of legitimate economic activity.

R.L. Stepaniuk draws attention to the classification of documents, noting that based on their criminal procedural significance, documents can be divided into two groups. The first group includes documents that are relevant to criminal proceedings due to the information contained in their content. These are referred to as written or independent pieces of evidence. The second group consists of documents considered material evidence, i.e., documents that served as instruments of the crime, were objects of criminal actions, bear traces of the offense, or serve as tools for solving the crime, identifying the perpetrator, or exonerating the innocent.

Furthermore, based on the informational significance of certain documents for investigating budget-related crimes, the scholar identifies the following categories:

1. Normative legal acts that define the rules for the formation, distribution, and use of budget funds;
2. Planning documents outlining the grounds for granting, the volume, distribution, and designated purpose of budget funds;
3. Documents defining the official status and authority of the public official involved in the offense (appointment orders, regulations on relevant departments or positions, professional qualification characteristics, job descriptions, etc.);
4. Documents establishing the legal status and sources of funding for the enterprise, institution, or organization where the offense was committed (charters of institutions, organizational statutes, main agreements, provisions on institutional activities approved by relevant governmental or local self-government bodies, and provisions on state or local budgetary or extra-budgetary funds);
5. Accounting and financial reporting documents that are of crucial importance for the investigation and may contain traces of unlawful conduct;
6. Documents evidencing the conclusion of contracts and serving as grounds for their payment;
7. Treasury (banking) documents;
8. Documents related to transactions involving treasury bills;
9. Draft records and unofficial correspondence of officials that are relevant to criminal proceedings (workbooks, notebooks, etc.);
10. Normative or administrative acts issued by an official or approved by order that

alter the revenue and expenditure of the budget contrary to the procedure established by law;

11. Documents concerning the adoption and registration of normative or administrative acts;

12. Other documents that may serve as sources of evidentiary information (Stepaniuk, 2004).

We fully agree with the scholarly contributions of the cited researchers; however, in our opinion, particular attention should be paid to the necessity of conducting such an investigative (search) action as the examination of primary documents during the investigation of criminal proceedings—especially those related to the misappropriation of budgetary funds. This action is indispensable for understanding the very process of committing the offense and the schemes employed by perpetrators to carry out unlawful activities.

As criminalistics experts note, document examination in the context of uncovering budget-related criminal offenses is not considered a priority investigative (search) action. By the time it is conducted, investigators and operative officers already possess sufficient information regarding the type of examination to be performed and the experts that need to be involved (Bidniak, Bidniak, Chaplynskyi, 2021). Typically, such an examination is carried out when a large volume of documents has been seized during a search, and, due to objective circumstances, it was not possible to record their content in the search protocol immediately. It may also be required to reassess the content of documents seized through temporary access to items and documents or during one or more searches (Prykhodko, 2023).

The examination, as an independent investigative (search) action, must be conducted in two specific cases: a) in relation to documents—written evidence—that were seized during a crime scene examination, temporary access to items and documents, or a search, but were not examined at the time of seizure; b) in relation to all documents classified as physical evidence, as current legislation stipulates that "physical evidence must be carefully examined, photographed if possible, thoroughly described in the examination report, and attached to the case file by a resolution of the inquiry officer, investigator, prosecutor, or a court ruling" (Stepaniuk, 2004).

It is essential to understand that primary documents directly reflect the business transactions carried out using budgetary funds. During their examination, investigators are afforded the opportunity to trace the actual flow of funds, determine whether expenditures were consistent with their designated purpose, identify the presence or absence of procurement procedure violations, and assess the factual performance of works or services. By examining the documents, investigators can conduct an analytical assessment, which enables the identification of discrepancies between the documented records and the actual use of funds—an essential element in proving the actus reus (objective element) of the criminal offense.

3. Specific Features of Document Examination

The examination of documents, like any other investigative (search) action, is carried out in three stages: preparatory, operational, and final. The preparatory stage begins from the moment a decision is made to conduct the investigative (search) action (Chaplynskyi, Luskatov, Pyrih, Pletenets, Chaplynska, 2014). The effectiveness of the document examination depends on the fixation of various elements, including:

1. key requisites of the document (the addressee, place, date, and issuer);
2. characteristics of the material (color and method of production);
3. detailed analysis of the content;
4. identification features (form number, watermarks, serial number, seals, stamps);
5. presence of corrections, erasures, damage, deletions;
6. method of completing the document (handwritten or typed);
7. color of inks used;
8. presence of signatures (Zapototskyi, 2017).

K. O. Chaplynskyi emphasizes the need to establish and record the following characteristics during document examination:

– **Content-based individualizing features**: title, requisites, presence of signatures, seals and stamps, serial number and date of issuance, opening and closing words, brief summary;

– **Form-based individualizing features**: types of notations (words, numbers, graphics), method of producing text (handwritten, typewritten, printed);

– **Material-based features**: type of material, color, dimensions, density, damage patterns, signs of restoration or tampering;

– **Indicators of forgery**: erasures, insertions, corrections, etching, ink removal, copying, substitution of photos or parts of the document;

– **Links to the criminal act**: any other properties that connect the document to the criminal event (Chaplynskyi, 2006).

The examination may involve the participation of the victim, suspect, defense

attorney, legal representative, and other parties to the criminal proceeding. To address issues requiring specialized knowledge, the investigator or prosecutor may invite relevant experts to participate (Criminal Procedure Code of Ukraine, 2012).

Since the examination of primary documents may reveal signs of forgery, fictitious transactions, inflated prices, embezzlement, or other unlawful actions, it is advisable for the investigator to involve an expert during the examination. The expert can guide the investigator to focus on relevant documents instead of reviewing all available materials at the enterprise, institution, or organization.

According to H. S. Bidniak, it is advisable to involve professionals with specific expertise, such as commodity experts, auditors, and others, during the document examination. These specialists may also use various tools (e.g., portable microscopes, magnifiers, illuminators) and methods of examination that do not alter or damage the document (Bidniak, 2016).

The specialist also plays a crucial role in examining electronic documentation, particularly focusing on user work logs, which often contain codes, passwords, and other valuable information (Prykhodko, 2023).

Involving a specialist at this stage contributes to better preparation for the subsequent appointment of necessary expert examinations, such as forensic economic, forensic accounting, or forensic construction analyses. Primary documents serve as the basis for calculating the amount of damage caused to the state as a result of the misappropriation of budgetary funds. These documents are later submitted to the relevant expert institutions for conducting the aforementioned examinations. Specifically, the precise calculation of damages is essential for the proper legal qualification of the offense and for filing a civil claim to seek compensation for the harm caused.

4. Conclusions

In conclusion, the examination of primary documents is fundamental in the investigation of criminal offenses related to the use of budgetary funds. It enables investigators to trace the flow of funds, identify inconsistencies, and collect evidence of fraudulent activities. Without a thorough review of the relevant documents, it would be nearly impossible to gain a clear understanding of how budgetary funds are allocated and spent.

Furthermore, it is essential to consider that during the examination of documents, the investigator also has the opportunity to identify individuals involved in the commission of the criminal offense. By analyzing primary documents, the investigator can determine who signed the documents, authorized payments, or received funds. This, in turn, makes it possible to establish the range of individuals involved in the unlawful scheme and define their respective roles in the commission of the offense.

References

Bidniak, H. S. (2016). Uchast spetsialista pry provedenni ohliadu dokumentiv pid chas rozsliduvannia shakhraistv [The participation of a specialist in the review of documents during the investigation of fraud]. *Kryminalistychnyi visnyk*, (1), 162–166. (in Ukrainian)

Bidniak, V. A., Bidniak, H. S., & Chaplynskyi, K. O. (2021). *Teoretychni, pravovi ta prakseolohichni zasady vykorystannia spetsialnykh znan pid chas rozsliduvannia zlochyniv, poviazanykh iz derzhavnym finansuvanniam v haluzi okhorony zdorovia : monohrafiia* [Theoretical, legal and praxeological principles of using special knowledge when investigating crimes related to state financing in the field of health care: monograph]. Odesa: Helvetyka. (in Ukrainian)

Chaplynskyi, K. O. (2006). *Taktyka provedennia okremykh slidchykh dii : monohrafiia* [Tactics of conducting individual investigative actions: monograph]. Dnipropetrovsk: Dnipropetrovsk State University of Internal Affairs. (in Ukrainian)

Chaplynskyi, K. O., Luskatov, O. V., Pyrih, I. V., Pletenets, V. M., & Chaplynska, Yu. A. (2014). *Kryminalistyka*[Forensic science]. Dnipropetrovsk: Dnipropetrovsk State University of Internal Affairs; Lira LTD. (in Ukrainian)

Ishchenko, V. (1997). Poniattia dokumenta yak dzherela dokaziv u kryminalnomu sudochynstvi [The concept of a document as a source of evidence in criminal proceedings]. *Pravo Ukrainy*, (2), 42–44. (in Ukrainian)

Klimenko, N. I. (2005). *Ohliad mistsia podii pry rozsliduvanni okremykh vydiv zlochyniv* [Scene inspection when investigating certain types of crimes]. Kyiv: Yurinkom Inter. (in Ukrainian)

Criminal Procedure Code of Ukraine No. 4651-VI dated 13.04.2012. Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text (in Ukrainian)

Prykhodko, D. S. (2023). Pidvyshchennia efektyvnosti provedennia ohliadu dokumentiv pid chas rozsliduvannia kryminalnykh pravoporushen, kvalifikovanykh za st. 191 KK Ukrainy [Increasing the efficiency of document review during the investigation of criminal offenses qualified under Art. 191 of the Criminal Code of Ukraine]. *Knowledge, Education, Law, Management*, (3), 365–370. (in Ukrainian)

Stepaniuk, R. L. (2004). *Metodyka rozsliduvannia zlochyniv, poviazanykh z porushenniamy biudzhetnoho zakonodavstva*[Methodology for investigating crimes related to violations of budget legislation] (Candidate's thesis). National University of Internal Affairs. Kharkiv. (in Ukrainian)

Zapototskyi, A. P. (2017). *Rozsliduvannia pryvlasnennia, roztraty maina abo zavolodinnia nym shliakhom zlovzhyvannia sluzhbovym stanovyshchem u sferi budivnytstva* [Investigation of embezzlement, misappropriation of property, or seizure by abuse of official position in the construction sector]. Kyiv: National Academy of Internal Affairs. (in Ukrainian)

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ОСОБЛИВОСТІ ОГЛЯДУ ДОКУМЕНТІВ ПІД ЧАС РОЗСЛІДУВАННЯ НЕЦІЛЬОВОГО ВИКОРИСТАННЯ БЮДЖЕТНИХ КОШТІВ

Анотація. ***Метою*** статті є висвітлення особливостей проведення огляду документів під час розслідування нецільового використання бюджетних коштів. ***Результати.*** У науковій статті висвітлено особливості огляду документів під час розслідування нецільового використання бюджетних коштів. Доведено, що важливого значення набувають слідчі (розшукові) дії, направлені на їх виявлення, вилучення, а також фіксацію криміналістично значущої інформації про обставини вчинення кримінального правопорушення, і які в подальшому стають об'єктами дослідження судових експертиз. Огляд первинних документів є основоположним у розслідуванні правопорушень, пов'язаних з бюджетними коштами. Це дозволяє слідчим простежити потік коштів, виявляти розбіжності та збирати докази шахрайської діяльності. Проаналізовано думки вчених та чинне законодавство, визначено роль та значення окресленої слідчої (розшукової) дії для досудового розслідування кримінальних правопорушень, пов'язаних із порушенням бюджетного законодавства. Надано перелік документів, які можуть свідчити про вчинення кримінального правопорушення, наведено їхню класифікацію за різними підставами. Акцентовано на первинних документах, оглядом яких можливо встановити фактичний рух коштів, відповідність витрат цільовому призначенню, наявність чи відсутність порушень процедур закупівель, фактичне виконання робіт чи надання послуг, а також виявити розбіжності між документальним оформленням та фактичним використанням коштів, що є ключовим для доведення об'єктивної сторони правопорушення. Наголошено на залученні спеціалістів для проведення огляду документів та їх функціональній складовій. ***Висновки.*** Зроблено висновок, що огляд первинних документів є основоположним у розслідуванні кримінальних правопорушень, пов'язаних із використанням бюджетних коштів. Це дозволяє слідчим простежити потік коштів, виявляти розбіжності та збирати докази шахрайської діяльності. Без ретельного вивчення відповідних документів було б майже неможливо встановити чітку картину про те, як виділяються та витрачаються бюджетні кошти. Окрім цього, необхідно враховувати, що під час огляду документів, слідчий має також можливість виявити коло осіб, причетних до вчиненого кримінального правопорушення. Аналізуючи первинні документи, слідчий може виявити осіб, які підписували документи, здійснювали платежі, отримували кошти. Все це безпосередньо дає змогу встановити коло осіб, причетних до протиправної схеми, та визначити їх роль у вчиненому кримінальному правопорушенні.

Ключові слова: бюджетні кошти, досудове розслідування, слідчі (розшукові) дії, бюджетні правопорушення, огляд, документи, спеціальні знання, кримінальне провадження.

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PRAXEOLOGICAL FRAMEWORK FOR FORMING METHODOLOGY FOR INVESTIGATING CRIMES COMMITTED BY TRANSNATIONAL ORGANISED CRIMINAL GROUPS

Abstract. ***Purpose.*** The purpose of the article is to study the praxeological framework for forming the methodology for investigating crimes committed by transnational organised criminal groups. ***Results.*** The article studies some aspects of investigating crimes committed by transnational organised criminal groups. The author emphasises that the methodology for investigating certain types of criminal offences is of great practical importance, as each of them provides specific practical recommendations on most aspects of criminal proceedings. In particular, it provides relevant algorithms for the actions of authorised persons in accordance with typical investigative situations, specifies the specific features of certain investigative (search) actions, covert investigative (search) actions and other search activities during the investigation of a specific illegal act or a group of them. It is stated that the methodology for investigating crimes committed by transnational organised criminal groups does not lose its practical significance, and even vice versa, only increases it, since its formation will provide recommendations for various categories of criminal proceedings. ***Conclusions.*** The key elements of the category under study are identified, namely: criminalistic description of crimes committed by transnational organised criminal groups; collection and analysis of primary data and entering information into the Unified Register of Pre-trial Investigations; circumstances to be clarified during the investigation; typical investigative situations and the corresponding algorithms of actions of authorised persons; and specific features of interaction between individual law enforcement units; prevention by authorised persons to eliminate the causes and conditions that contributed to the commission of an unlawful act; organisational and tactical aspects of procedural actions and other measures at the initial and subsequent phases of criminal proceedings; tactical operations; international cooperation measures used in the investigation of crimes committed by transnational organised criminal groups; specifics of international legal assistance in the course of investigation of a certain category of unlawful acts; specific features of the use of special knowledge in the category of criminal proceedings under study; activities of authorised persons at the final phase of criminal proceedings.

Key words: transnational organised criminal group, criminal offences, methodology, investigation, investigative (search) actions, investigation planning.

1. Introduction

The methodology for investigating certain types of criminal offences is of great practical importance, as each of them provides specific practical recommendations on most aspects of criminal proceedings. In particular, it provides relevant algorithms for the actions of authorised persons in accordance with typical investigative situations, specifies the specific features of certain investigative (search) actions, covert investigative (search) actions and other search activities during the investigation of a specific illegal act or a group of them. The methodology for investigating crimes committed by transnational organised criminal groups does not lose its practical significance, and even vice versa, only increases it, since its formation will provide recommendations for various categories of criminal proceedings.

The following national scholars who have focused their research on the development of the methodology for investigating criminal offences should be noted: O.A. Antoniuk, V.P. Bakhin, P.D. Bilenchuk, V.M. Vartsaba,

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H.P. Zharovska, N.S. Karpov, O.L. Kobylianskyi, M.V. Kostenko, O.V. Kuzmenko, A.V. Kofanov, A.M. Lazebnyi, B.S. Levytskyi, K.M. Marysiuk, P.Ya. Minka, Ye.K. Paniotov, V.S. Polianska, N.P. Sichko, K.O. Chaplynskyi, A.P. Sheremet, B.V. Shchur and others. In addition, our study is based on a comprehensive approach to formulating the scientific category, considering international practice and current trends.

The purpose of the article is to study the praxeological framework for forming the methodology for investigating crimes committed by transnational organised criminal groups.

2. Investigation of crimes committed by transnational organised crime groups

To begin with, it would be appropriate to refer to the statement of M.V. Kostenko, who argues that '...the specific features of the investigation of crimes committed by organised groups are, first of all, in solving specific tasks related to the establishment and proof of the signs of organisation of a criminal group. These are tactical tasks of the investigation, as they are intermediate on the way to solving the final (strategic) tasks of criminal proceedings, as defined in Article 2 of the CPC of Ukraine (Criminal Procedure Code of Ukraine, 2012). The concept of a tactical task of investigation performs an important function of structuring criminal proceedings, highlighting its individual intervals and focusing on them by the pre-trial investigation body'. In addition, the author has identified the tactical tasks of the investigation as follows: 1. A tactical task to establish the quantitative composition of a group of persons. 2. A tactical task to establish the stability of ties between group members. 3. A tactical task to establish a clear and unified plan of criminal activities known to all members of the group. 4. A tactical task to establish the distribution of functions of the group members aimed at implementing the plan of criminal activity (Kostenko, 2017). It is evident that the scientist has identified specific tasks that, in our opinion, should be solved by a specific set of various procedural actions and search activities.

Another interesting opinion is that of B.V. Shchur, who argues that a specific feature of the structure of an organised criminal group is the presence of special persons (groups of persons, blocks) who are entrusted with the function of protection from exposing the activities of a criminal group (persons ensuring discipline; persecuting persons trying to stop criminal activity; maintaining links with corrupt representatives of the authorities, etc.) The researcher emphasises that the specificity of their activities is that the defence mechanism is laid down from the moment of formation of the organised group (for example, strict secrecy of the group's functioning) (Shchur, 2005). In other words, transnational organised criminal groups use this mechanism to counteract the investigation of their crimes, which necessitates the creation of an effective methodology for their investigation.

According to V.M. Vartsaba, the activities of organised criminal groups are characterised by a certain succession of unlawful acts, the use of complex methods of committing them, and the use of criminal technologies. The author states that in the mechanism of organised criminal activity, a special place is assigned to corrupt relations with employees of authorities and law enforcement bodies. From the criminalistic perspective, a forensic scientist notes that this refers to corrupt ties between representatives of authorities (including law enforcement bodies) and criminals, and to the interaction of authorities and management officials with leaders (or members) of organised criminal groups. The scholar underlines that this interaction involves various illegal forms, in particular, it can be either bribery (one-time or repeated bribery) of officials to resolve issues related to the legal or illegal 'business' of a criminal group, or involvement (drag) of officials in a joint 'business'. In addition, V. Vartsaba drew attention to the processes associated with the politicisation of organised crime (Vartsaba, 2003). In other words, the author identifies such characteristic features of transnational organised criminal groups as corrupt ties with employees of authorities and law enforcement bodies, as well as politicisation of organised criminal activity, which directly complicates the process of investigating crimes committed by them.

As mentioned above, scholars currently have ongoing disputes regarding the concept and structure of the methodology for investigating certain groups of criminal offences. For example, a group of authors defines it as an independent section of criminalistics that includes scientific provisions, recommendations and methods of investigation of certain types of crimes based on the requirements of criminal procedure legislation. Regarding its structure, criminologists argue that for each type of unlawful act some structural schemes and algorithms of activity are suitable for investigating any other type of crime, and these elements are called the structure of a particular methodology. To sum up, the researchers include the following main elements: "... criminalistic characteristics of a certain type of crime; circumstances to be established; specific features

of criminal proceedings; priority investigative actions, search operations; typical investigative situations, typical versions and planning; tactics of certain investigative actions; preventive actions of the investigator" (Bilenchuk, Hel, Semakov, 2007).

The list of components proposed by V. Maliuha is quite appropriate, stressing that "researchers rightly consider the regularities of organisation and planning of the investigation; forensic features of verification of information about the crime and opening of criminal proceedings; investigative versions, circumstances to be clarified, preventive activities of the investigator, as well as the use of special knowledge and other issues to be the structural elements of the methodology for investigating certain types of crimes. Obviously, depending on the type of crime, one or another element of the methodology for investigating certain types of crimes will be of greater or lesser practical importance, but it should be a certain system of developed recommendations that are important for the investigation of crimes. Individual investigative techniques, in one way or another, should cover the following main sections (constituent elements): criminalistic description of the relevant type of crime; typical investigative situations at the stage of detection of a crime and the stages of its investigation; criminalistic issues of commencing criminal proceedings; regularities of organising and planning an investigation; investigative versions, circumstances to be clarified; algorithm of investigative (search) actions and operative-search measures, determined by the tasks of typical investigative situations; particularities of conducting individual investigative (search) actions and their systems (tactical operations); coordination of law enforcement bodies in the investigation and specific features of interaction between the investigator and operational units, supervisory and other state bodies, associations of citizens, etc." (Maliuha, 2015).

3. Methodology of investigation of certain types of criminal offences

According to M.M. Yefimov, the definition of the methodology of investigation of certain types of criminal offences is a system of scientific provisions, as well as methodological and practical recommendations for the investigation of certain types and groups of criminal offences developed on their basis. In addition, the scholar argues that changes in criminal procedure and criminal law, as well as the overall reform of the law enforcement system of Ukraine, have led to appropriate changes in the methodology of investigation of certain types of unlawful acts, namely, the author identifies the following structural elements of the scientific category under study: '... criminalistic description of crimes; analysis of initial information and commencement of criminal proceedings; circumstances to be proved in criminal proceedings; typical investigative situations of investigation; specific features of initial investigative (search) actions, covert investigative (search) actions and other measures; specific features of further investigative (search) actions, covert investigative (search) actions and other measures; specific features of the use of specialised knowledge during the investigation of a criminal offence; preventive activities of the investigator regarding the causes and conditions that contributed to the commission of a criminal offence; specific features of the investigator's activities at the final stage of the investigation" (Yefimov, 2018).

In A.P. Sheremet's opinion, the investigation methodology is interconnected with these two areas (practical and theoretical), namely, the process of investigation of unlawful acts and the section of the criminalistics science, which contains a system of comprehensive forensic recommendations for the detection, investigation and prevention of certain types of criminal offences. Given the above, the researcher correctly concludes that the scientific category under study manifests its purpose by contributing to the development of scientific recommendations and their implementation in the practice of crime investigation. With regard to the structure of the methodology for investigating a particular type of unlawful act, the author identifies the following structural elements: "... criminalistic description of this type of offence; circumstances to be established; specific features of criminal proceedings; priority investigative actions and operative-search measures; typical investigative situations, typical versions and planning; tactics of certain investigative actions; preventive investigative actions" (Sheremet, 2009).

With regard to the structure of certain categories of methodologies for investigating criminal offences, we consider interesting the one provided by O.V. Kuzmenko and N.P. Sichko on the investigation of collaboration, stating that "...first, the construction of any individual criminalistic methodology should be united on a legal, scientific and information-practical basis. Second, the structure of the methodology for investigating collaboration should include: 1) criminalistic description; 2) circumstances to be proved; 3) versions of investigation; 4) separate investigative (search) actions and operative-search measures" (Kuzmenko, Sichko, 2022).

For example, O.A. Antoniuk identifies the following elements of the methodology for investigating criminal offences against public order, namely: "...criminalistic description; verification of initial information and entering information into the URPI; circumstances to be established in criminal proceedings; typical investigative situations; specifics of interaction between different law enforcement units; specific features of procedural actions and other measures of the initial and subsequent stages of investigation; specifics of applying specialised knowledge during the investigation; activities of authorised persons to eliminate the causes and conditions that contributed to the commission of the offence; specifics of activities of authorised persons at the final stage of investigation" (Antoniuk, 2019).

With regard to the methodology of investigation of unlawful acts committed by organised crime, for example, V.M. Vartsaba identifies the following elements: structure and psychological mechanism of functioning of organised criminal groups; criminalistic description of crimes committed by organised criminal groups; detection of signs of an organised group committing an offence; planning of investigation and putting forward versions; specific tactics of certain investigative (search) actions (inspection of the scene, interrogation, search); specifics of the use of specialised knowledge; formation and use of tactical systems (operations) (Vartsaba, 2003).

According to K.O. Chaplynskyi, the following components in this structure can be considered: criminalistic analysis of organised crime: concepts and signs; concept, types and place of organised criminal groups in the structure of organised crime; criminalistic description of the leader and other members of organised criminal groups; organisation and tactics of investigative (search) actions to extract information from material objects; organisation and tactics of investigative (search) actions to obtain information from personal sources (Chaplynskyi, 2004).

In conclusion, a group of scholars argues that the methodology of investigating transnational crimes includes components such as: "...group methods of investigating crimes, the characteristic feature of the criminalistic description thereof is the presence of a foreign element; individual methods of investigating crimes, the characteristic feature of the criminalistic description thereof is the presence of a foreign element" (Bilenchuk, Kofanov, Kobylianskyi, Paniotov, 2011). It is obvious that in most cases, some elements are repeated, but in general, there is a stable list of them.

The analysis of the materials of forensic and investigative practice, as well as the study of scientific works by a number of criminalists, has enabled to identify the main elements of the methodology for investigating crimes committed by transnational organised criminal groups, as follows:

– Criminalistic description of crimes committed by transnational organised criminal groups;

– Collection and analysis of primary data and entering information into the Unified Register of Pre-trial Investigations;

– Circumstances to be clarified during the investigation;

– Typical investigative situations and the corresponding algorithms of actions of authorised persons;

– Specific features of interaction between individual law enforcement units;

– Prevention by authorised persons to eliminate the causes and conditions that contributed to the commission of an unlawful act;

– Organisational and tactical aspects of procedural actions and other measures at the initial and subsequent phases of criminal proceedings;

– Tactical operations;

– International cooperation measures used in the investigation of crimes committed by transnational organised criminal groups;

– Specifics of international legal assistance in the course of investigation of a certain category of unlawful acts;

– Specific features of the use of special knowledge in the category of criminal proceedings under study;

– Activities of authorised persons at the final phase of criminal proceedings.

4. Conclusions

To sum up, it should be noted that the methodology for investigating certain types of criminal offences is of great practical importance, as each of them provides specific practical recommendations on most aspects of criminal proceedings. Its key elements are identified, namely: criminalistic description of crimes committed by transnational organised criminal groups; typical investigative situations and the corresponding algorithms of actions of authorised persons; prevention by authorised persons to eliminate the causes and conditions that contributed to the commission of an unlawful act; tactical operations; international cooperation measures used in the investigation of crimes committed by transnational organised criminal groups; specifics of international legal assistance in the course of investigation of a certain category of unlawful acts; specific features of the use of special knowledge in the category of criminal proceedings under study; activities of authorised persons at the final phase of criminal proceedings.

References:

Antoniuk, O.A. (2019). Naukova polemika shchodo sutnosti metodyky rozsliduvannia kryminalnykh pravoporushen proty hromadskoho poriadku [Scientific polemics on the essence of the methodology for investigating criminal offenses against public order]. Aktualni problemy ekspertnoho zabezpechennia dosudovoho rozsliduvannia, no. 1, pp. 249–252 (in Ukrainian).

Bilenchuk, P.D., Hel, A.P., Semakov, H.S. (2007). Kryminalistychna taktyka i metodyka rozsliduvannia okremykh vydiv zlochyniv [Forensic tactics and methods of investigating certain types of crimes]. Kyiv : MAUP (in Ukrainian).

Bilenchuk, P.D., Kofanov, A.V., Kobylianskyi, O.L., Paniotov, Ye.K. (2011). Transnatsionalna zlochynnist: kryminalistychnyi analiz [Transnational crime: forensic analysis]. Kyiv : KYI (in Ukrainian).

Chaplynskyi, K.O. (2004). Orhanizatsiia i taktyka slidchykh dii pry rozsliduvanni zlochyniv, vchynenykh orhanizovanymy zlochynnymy uhrupovanniamy [Organization and tactics of investigative actions in the investigation of crimes committed by organized criminal groups]. Dnipropetrovsk : Yurydychna akademiia MVS (in Ukrainian).

Kostenko, M.V. (2017). Shchodo osoblyvostei rozsliduvannia zlochyniv, vchynenykh orhanizovanymy hrupamy [On the peculiarities of investigating crimes committed by organized groups]. Visnyk Kharkivskoho natsionalnoho universytetu imeni V.N. Karazina, no. 24. rr. 148–150 (in Ukrainian).

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

Kuzmenko, O.V., Sichko, N.P. (2022). Metodyka rozsliduvannia kolaboratsiinoi diialnosti [Methods of investigating collaborative activities]. Irpinskyi yurydychnyi chasopys: naukovyi zhurnal. no. 1, rr. 215–221 (in Ukrainian).

Maliuha, V. (2015). Struktura metodyky rozsliduvannia okremykh vydiv zlochyniv i mistse v nii vzaiemodii slidchoho [The structure of the methodology for investigating certain types of crimes and the place of the investigator's interaction in it]. Pidpryiemnytstvo, hospodarstvo i pravo, no. 8, rr. 61–65 (in Ukrainian).

Shchur, B.V. (2005). Taktyka usunennia protydii rozsliduvanniu zlochyniv, shcho vchyniaiutsia orhanizovanymy zlochynnymy hrupamy [Tactics of eliminating resistance to the investigation of crimes committed by organized criminal groups]. *Candidate's thesis*. Natsionalna yurydychna akademiia Ukrainy imeni Yaroslava Mudroho. Kharkiv (in Ukrainian).

Sheremet, A.P. (2009). Kryminalistyka [Forensic science]. Kyiv : Tsentr uchbovoi lit. (in Ukrainian).

Vartsaba, V.M. (2003). Rozsliduvannia zlochyniv orhanizovanykh zlochynnykh hrup (taktyko-psykholohichni osnovy) [Investigation of crimes of organized criminal groups (tactical and psychological foundations)]. *Candidate's thesis*. Natsionalna yurydychna akademiia Ukrainy imeni Yaroslava Mudroho. Kharkiv (in Ukrainian).

Yefimov, M.M. (2018). Rozsliduvannia zlochyniv proty hromadskoho poriadku ta moralnosti [Investigation of crimes against public order and morality]. Dnipro : Dniprop. derzh. un-t vnutrishnikh sprav (in Ukrainian).

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ПРАКСЕОЛОГІЧНІ ЗАСАДИ ФОРМУВАННЯ МЕТОДИКИ РОЗСЛІДУВАННЯ ЗЛОЧИНІВ, УЧИНЕНИХ ТРАНСНАЦІОНАЛЬНИМИ ОРГАНІЗОВАНИМИ ЗЛОЧИННИМИ УГРУПОВАННЯМИ

Анотація. ***Метою*** статті є дослідження праксеологічних засад формування методики розслідування злочинів, учинених транснаціональними організованими злочинними угрупованнями. ***Результати.*** Наукова стаття присвячена дослідженню деяких аспектів розслідування злочинів, учинюваних транснаціональними організованими злочинними угрупованнями. Автор акцентує увагу на тому, що методика розслідування окремих видів кримінальних правопорушень має надзвичайно важливе практичне значення через те, що кожній з них надані конкретні практичні рекомендації по більшості аспектів кримінальних проваджень. Зокрема, надаються відповідні алгоритми дій уповноважених осіб відповідно до типових слідчих ситуацій, вказуються особливості проведення окремих слідчих (розшукових) дій, негласних слідчих (розшукових) дій та інших пошукових заходів під час розслідування певного протиправного діяння чи їх групи. Зазначено, що методика розслідування злочинів, учинених транснаціональними організованими злочинними угрупованнями, має дуже важливе практичне значення через формування рекомендацій для різних категорій кримінальних проваджень. ***Висновки.*** Виокремлено основні елементи досліджуваної категорії, а саме: криміналістична характеристика злочинів, вчинених транснаціональними організованими злочинними угрупованнями; збір та аналіз первинних даних та внесення інформації до Єдиного

реєстру досудових розслідувань; обставини, які підлягають з'ясуванню під час розслідування; типові слідчі ситуації та відповідні їм алгоритми дій уповноважених осіб; особливості взаємодії окремих підрозділів правоохоронних органів; профілактична діяльність уповноважених осіб стосовно усунення причин і умов, які сприяли вчиненню протиправного діяння; організаційно-тактичні аспекти проведення процесуальних дій та інших заходів початкового та подальшого етапів кримінального провадження; тактичні операції; заходи міжнародного співробітництва, що застосовуються під час розслідування злочинів, вчинених транснаціональними організованими злочинними угрупуваннями; специфіка міжнародно-правової допомоги під час розслідування визначеної категорії протиправних діянь; особливості використання спеціальних знань в досліджуваній категорії кримінальних проваджень; діяльність уповноважених осіб на заключному етапі кримінального провадження.

Ключові слова: транснаціональне організоване злочинне угруповання, кримінальні правопорушення, методика, розслідування, слідчі (розшукові) дії, планування розслідування.

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IDENTIFYING PRIORITY AREAS FOR COMBATING CORRUPTION IN UKRAINE

Abstract. ***Purpose.*** The purpose of this article is to identify and characterize the priority areas in combating corruption in Ukraine. ***Results.*** It is emphasized that each state has its own approach to preventing the receipt or offering of undue benefits. For example, Italian carabinieri are required to wear white gloves in all weather conditions, even in extreme heat—not for appearance's sake, but to draw attention when they handle money, either receiving or concealing it. In the United States, police departments are often housed in open-plan spaces where officers' workstations are not separated by walls—sometimes only by wooden or drywall partitions of about 1.5 meters in height. The department head has a glass-walled office, and rooms for suspect interrogation, identification procedures, and other investigative actions, while walled, are shared spaces accessible to all employees. It is determined that the top-priority measures to counteract corruption should include efforts to restore public trust in government institutions, foster a sense of justice among citizens, and ensure the protection of whistleblowers to eliminate fear of retaliation for reporting suspected corrupt practices. ***Conclusions.*** It is concluded that the foremost anti-corruption measures should be as follows:

1. restoring public trust in state authorities, cultivating a sense of justice among citizens, and guaranteeing whistleblower protection to eliminate fear of punishment for reporting suspected corruption;
2. establishing effective reporting mechanisms for corruption-related offenses through public liaison departments (hotlines, special phone lines), official websites, and electronic communication tools;
3. creating appropriate working conditions for public officials;
4. utilizing polygraph testing for candidates for public service positions;
5. implementing the "Transparent Office" program;
6. introducing automated document control systems in all state enterprises, institutions, and organizations.

Key words: corruption prevention, public anti-corruption expertise, regulatory legal act, parliamentary hearings, legislative initiative.

1. Introduction

The term "combating corruption" has long been used by criminologists and other scholars. Combating corruption is defined as any activity within the sphere of social governance aimed at reducing opportunities for the corruption of social relations, ensuring the rule of law, implementing other legal principles, promoting the development of a democratic society, and consolidating the rule of law (Mykhnenko, 2011, p. 54).

In Ukraine, specially authorized entities have been established to combat corruption. These include the prosecutorial authorities, the National Police, the National Anti-Corruption Bureau of Ukraine, and the National Agency on Corruption Prevention. The latter operate pursuant to the Law of Ukraine "On Prevention of Corruption" (Law of Ukraine On Prevention of Corruption, 2014).

The system for preventing and combating manifestations of corruption is based on organizational and legal foundations, the core of which is current anti-corruption legislation (Kovbasyuk, Obolenskyi, Seryogin, 2012). Modern legislation has attempted to anticipate all possible variants of measures for preventing and combating corruption in Ukraine. However, this system does not function fully and therefore requires supplementation and improvement. In our view, it is necessary to start with normative legal acts directly aimed at combating corruption in Ukraine. Unfortunately, the National Anti-Corruption Strategy for 2011–2015, approved by the Decree of the President of Ukraine dated October 21, 2011, No. 1001, did not become

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an effective instrument of anti-corruption policy. Consequently, the Law of Ukraine "On the Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014–2017," dated October 14, 2014, No. 1699-VII, was adopted (Law of Ukraine On the principles of state anti-corruption policy in Ukraine (Anti-corruption strategy) for 2014-2017, 2014). Later, on June 20, 2022, the Law of Ukraine "On the Principles of State Anti-Corruption Policy 2021–2025," No. 2322-IX, was enacted (Law of Ukraine On the principles of state anti-corruption policy 2021-2025, 2022).

2. General Problems of Combating Corruption

Regarding the prevention of receiving undue benefits or gifts, the legislator has stipulated the actions of an official in such situations. Persons authorized to perform the functions of state or local self-government bodies, as well as persons equated to them, upon receiving a proposal for an undue benefit or gift, notwithstanding private interests, are obliged to immediately take the following measures:

1. refuse the proposal;
2. if possible, identify the person who made the proposal;
3. involve witnesses, if possible, including among employees;
4. notify in writing their immediate supervisor (if available) or the head of the respective body, enterprise, institution, organization, or specially authorized entities in the field of combating corruption.

In a situation where a person subject to restrictions on the use of official position and receiving gifts discovers in their official premises or receives property that may constitute an undue benefit or a gift, they are obliged to immediately, but no later than one working day, notify in writing their immediate supervisor or the head of the relevant body, enterprise, institution, or organization about this fact.

An act is drawn up upon detection of property that may constitute an undue benefit or gift, signed by the person who discovered the undue benefit or gift and their immediate supervisor or the head of the relevant body, enterprise, institution, or organization.

If the property that may constitute an undue benefit or gift is discovered by a person who is the head of a body, enterprise, institution, or organization, the act on the detection of such property is signed by that person and the individual authorized to perform the duties of the head of the respective body, enterprise, institution, or organization in their absence.

Let us turn to the views of scholars who have addressed issues of combating corruption in their works. Yu.V. Kovbasyuk, O.Yu. Obolenskyi, S.M. Seryogin, and others consider that the main task of the anti-corruption system should be to form effective social control institutions in society, including:

1. state control – a highly professional work of all law enforcement agencies, especially their specialized units; clear delineation of their tasks, powers, and functions;
2. legislative control – improvement of the legislative framework to combat crime, corruption, and legal mechanisms;
3. public control – the right of society to oversee the work of all branches and institutions of power, including reporting, evaluating performance, and applying influence measures (Kovbasyuk, Obolenskyi, Seryogin, 2012).

Indeed, to effectively combat corruption-related crimes, a comprehensive set of measures from various directions is required to monitor citizens' activities within the state. Only through close interaction and fostering a strong moral consciousness among citizens is it possible to halt and eliminate manifestations of corruption.

Alongside the above, O. Banchuk proposes the following measures to prevent corrupt acts:

1. a high level of awareness among private individuals regarding the activities of government bodies, i.e., providing proper, complete, and reliable information to persons who approach a certain local self-government body or seek information about it, as one of the main means of preventing corruption offenses;
2. access to the relevant body. This implies that the lack of full access to the local self-government body, including services provided by its employees, becomes a cause of corrupt manifestations;
3. establishing reasonable time limits for citizen services. That is, substantiated and reasonable deadlines must be set for the provision of relevant services, processing citizen requests, and fulfilling other tasks;
4. proper internal control and effectiveness of official investigations. The weakness and underdevelopment of the internal control function in local self-government bodies are among the general problems of organization and activity of public administration in Ukraine, significantly affecting the state of corruption. Its inefficiency manifests in the absence, in most government bodies, of the obligation to control compliance with professional ethics and anti-corruption legislation by their employees;
5. simplification of service provision procedures. This involves introducing

a comprehensive administrative procedure based on the "one-stop shop" principle; integrated services (where a person receives all or most common services at one location on a given administrative-territorial level); citizens' reception during working hours; on-the-spot payment for services, etc.;

6. transparency of service provision. This includes placing informative and accessible information stands in local self-government premises regarding citizens' rights and the specifics of their implementation;

7. reduction of personal contact between officials and citizens (for example, the use of email for submitting inquiries and providing responses thereto) (Banchuk, 2012).

In our view, the primary measures to combat corruption should focus on restoring public trust in state authorities, fostering a sense of justice among citizens, and ensuring the protection of whistleblowers in order to eliminate the fear of punishment for reporting suspected corrupt acts.

Access to information is an essential tool for conducting investigative journalism and stimulating civic engagement in the anti-corruption sphere. A positive step towards combating crimes envisaged by Article 368 of the Criminal Code of Ukraine was the legislative enshrinement of public participation in anti-corruption measures, in particular Article 21 of the Law of Ukraine "On Prevention of Corruption." Accordingly, public associations, their members or authorized representatives, as well as individual citizens, in activities aimed at preventing corruption, have the right to:

1. report detected facts of corruption or corruption-related offenses, actual or potential conflicts of interest, to specially authorized anti-corruption entities, the National Agency, management or other representatives of the body, enterprise, institution, or organization where such offenses were committed or whose employees have a conflict of interest, as well as to the general public;

2. request and receive from state bodies, authorities of the Autonomous Republic of Crimea, and local self-government bodies, in the manner prescribed by the Law of Ukraine "On Access to Public Information," information concerning anti-corruption activities;

3. conduct or commission public anti-corruption expertise of regulatory legal acts and draft regulatory legal acts, submit proposals based on the expertise results to relevant authorities, and receive information from these authorities regarding the consideration of submitted proposals;

4. participate in parliamentary hearings and other events on anti-corruption issues;

5. submit proposals to legislative initiative entities aimed at improving the legislative regulation of relations arising in the field of corruption prevention;

6. conduct or commission research, including scientific and sociological studies, on corruption prevention issues;

7. carry out activities to inform the public on corruption prevention matters;

8. exercise public control over the enforcement of laws in the area of corruption prevention, using forms of control not prohibited by law;

9. undertake other measures for corruption prevention not prohibited by law [1, p. 2056].

Furthermore, public associations, as well as natural and legal persons, cannot be denied access to information concerning the competence of subjects implementing anti-corruption measures, as well as regarding the main directions of their activities.

The above-described public activities related to exposing and reporting crimes must be safe. Citizens should be confident that they will not face any danger for reporting corruption-related offenses.

Although the legislator seemingly guarantees such safety, including the possibility of anonymous reporting of crimes, the desired effect has yet to be achieved.

A significant step in improving the anti-corruption system was the adoption of the Law of Ukraine dated May 13, 2014, No. 1261-VII "On Amendments to Certain Legislative Acts of Ukraine in the Field of State Anti-Corruption Policy in Connection with the Implementation of the Action Plan on the Liberalization of the Visa Regime for Ukraine by the European Union." According to this law, protections for whistleblowers of corruption were strengthened, in particular:

1. the burden of proof in cases involving repressive measures against informants (whistleblowers) was shifted to the defendant;

2. the possibility to report corruption anonymously, including through dedicated hotlines, was legally enshrined;

3. the obligation of state authorities to establish mechanisms for receiving and verifying reports of corruption (including anonymous reports) was introduced (Law of Ukraine On Amendments to Certain Legislative Acts of Ukraine in the Field of State Anti-Corruption Policy in Connection with the Implementation of the Action Plan on the Liberalization of the Visa Regime for Ukraine by the European Union, 2014).

Importantly, since May 2011, Ukraine has been operating under the Law "On Access to Public Information," which has been

recognized as one of the best in the world in terms of regulation. Subsequently, important amendments were made to several legislative acts to align them with this law and the Law of Ukraine "On Information" (new edition). Nevertheless, practical implementation of new provisions concerning access to information remains low; actual access opportunities are limited; instances of unjustified denial of information access or failure to publish information proactively are not uncommon; and effective state control over the implementation of the right to access public information is absent.

Scholars such as Yu.V. Kovbasyuk, O.Yu. Obolenskyi, S.M. Seryogin, M.M. Bilynska, and others classify measures for preventing and combating corruption in the civil service into the following areas:

1. Adaptive – aligning the structure of Ukraine's civil service with the recommendations and standards of EU member states;

2. Transparency and publicity – ensuring openness in the hiring of civil servants, decision-making through competitions, etc.;

3. Punitive – establishing an effective anti-corruption system whereby committing corruption offenses inevitably results in responsibility for the perpetrators, with negative social and official consequences;

4. Organizational and managerial – for example, legislative definition of procedures for decision-making, control over the accuracy of civil servants' declarations of income and expenses;

5. Legal – unification of normative legal acts in the field of Ukraine's civil service;

6. Preventive – preventing social prerequisites of corruption and eliminating causes of corrupt acts;

7. Socio-economic – creating a system of social relations in which lawful behavior of public servants is socially prestigious and beneficial (Kovbasyuk, Obolenskyi, Seryogin, 2012).

There are many ways to prevent corruption, among which the majority involve reporting corruption offenses through: public liaison departments (hotlines, special telephone lines), official websites, electronic communication means, creating appropriate working conditions for officials, and institutions for control, among others.

3. Creating Appropriate Conditions as an Anti-Corruption Measure

Creating appropriate conditions is considered the safest and most cost-effective anti-corruption measure. There are various ways to implement it, including:

1. establishing adequate organizational and material working conditions;

2. guaranteeing and ensuring social protection for civil servants;

3. providing an appropriate level of financial remuneration, among others.

However, ensuring these conditions does not guarantee that a civil servant will refrain from the temptation to accept undue benefits; it only makes it possible to minimize such cases.

As a means to achieve this goal, we propose utilizing the positive experience gained from implementing the "Transparent Office" program, which was launched in 2009 in Vinnytsia as an experimental project and received a positive evaluation from the Council of Europe as the best practice in the provision of administrative services to citizens.

According to this program, the Administrative Services Center "Transparent Office" was established in Vinnytsia as a working body of the city council executive committee, where administrative services are provided through an administrator interacting with the service providers. An integral part of the Center is a unified permitting center, which organizes the issuance of permit documents in accordance with the Law of Ukraine "On the Permitting System in the Sphere of Economic Activity." The Center unites representatives of administrative bodies, administrators, state administrators, and state registrars to ensure interaction among all participants of the Center in achieving its goals.

The Center was created with four main objectives:

1. organizing the receipt and registration of applications and petitions from applicants for the subsequent legal formalization of the conditions for the exercise of their rights, freedoms, and legitimate interests upon their request;

2. forming permitting cases, conducting registration actions, creating, maintaining, and storing registration files of business entities, and organizing document flow to ensure quality administrative services for applicants;

3. developing and applying methods and tools to minimize and eliminate corruption threats that may arise during interactions between applicants and administrative bodies;

4. simplifying and optimizing the system of administrative service provision to applicants (Regulations on the Center for Administrative Services "Transparent Office," 2020).

Furthermore, paragraph 1.9 of the General Provisions states that officials and employees of the Center's participants ensure compliance with and implementation of the Quality Policy, Anti-Corruption Policy, and Information

Security Policy approved by the Vinnytsia City Council.

The general principles governing the work of the Center's participants are:

1. accessibility of services for all natural and legal persons;
2. adherence to service provision standards;
3. compliance of service fees with legislative requirements;
4. openness and transparency;
5. clarity of procedures;
6. prompt resolution of issues;
7. ensuring applicants' access to information on the status, progress, and results of consideration of their requests.

A distinctive feature of the Centers is the presence of transparent glass walls in offices providing permit services. Citizens are received exclusively by electronic queue.

We consider the introduction of these provisions into all areas of public service as the most necessary next step in the fight against Ukrainian corruption. Corruption offenses have so deeply entrenched themselves in our mentality over many years that the term "Ukrainian corruption" has become, in fact, justified.

A positive outcome will result from implementing these principles in the judicial and law enforcement spheres.

As is known, judges' chambers are located separately from courtrooms and common areas and also serve as deliberation rooms. However, practice shows that unauthorized persons, whose goal is to obtain and provide undue benefits to influence court decisions, have access to these premises and chambers. Often such persons are defense attorneys, including lawyers. There is even an unofficial saying: "A good lawyer is a good middleman." Sometimes the aforementioned goal is realized in the judge's chamber (deliberation room) precisely during the period between the judge's entry into the deliberation room and the announcement of the court's decision. Media outlets have repeatedly reported cases of hundreds or thousands of units of foreign currency found in judges' robes. Also known are cases of interference with the automated system for the distribution of criminal cases among judges aimed at obtaining undue benefits.

Accordingly, it is proposed to introduce the use of transparent glass walls in judges' deliberation rooms and offices to prevent interference by external interested parties in the adoption of procedural decisions and in the resolution of proceedings on the merits. However, such glass must be equipped with anti-eavesdropping systems to ensure confidential discussions and voting. These measures would facilitate the proper administration of criminal and other forms of justice and safeguard the rights and legitimate interests of participants in judicial proceedings.

Similar measures may be implemented in prosecutorial offices with minor adjustments. All workspaces in prosecution offices should have transparent walls, except for one or two rooms designated for investigative actions, such as identification parades, forensic examinations, etc. A similar but more differentiated approach can be introduced in the structural subdivisions of the National Police.

Each country has its own methods of preventing the offering or acceptance of undue benefits. For example, Italian carabinieri are required to wear white gloves in all weather conditions, even in extreme heat—not for aesthetic reasons. The rationale is that such gloves draw greater attention to the officer when he receives or places money into his pocket. In the United States, police departments are located in large open spaces with no walls between workstations—only partial wooden or drywall partitions of about 1.5 meters in height. The department head occupies a quasi-office with glass walls. Rooms for interrogations, suspect identifications, and other investigative procedures, which have regular walls, are shared and accessible to all personnel.

In our opinion, the office of an investigator of the National Police of Ukraine should remain isolated until the standard layout of police station buildings is comprehensively reformed. Practice shows that in many Ukrainian cities, it is not uncommon for parties to proceedings, their parents, relatives, and other persons to queue outside an investigator's office, waiting to be called in. At times, co-perpetrators of a criminal group must be kept in separate corners of the hallway to prevent them from coordinating their testimonies, due to the absence of designated facilities. Unlike prosecutors, investigators are solely responsible for conducting investigative actions and adopting procedural decisions in criminal proceedings. Therefore, their offices should remain isolated for the time being, albeit with a mandatory long-term objective of aligning with Western standards.

Another preventive anti-corruption measure aimed at avoiding the acceptance of offers, promises, or undue benefits by public officials is the introduction of an automated document management control system—*"Megapolis"*—in all state enterprises, institutions, and organizations. This system has been in use by the Main Department of the Civil Service of Ukraine for many years. Its core principle is that any document (e.g., a citizen's request) submitted to

a public institution remains in the registry office throughout the entire processing period. Only a scanned copy of the document is transmitted between the office of the institution's head (who assigns it for execution) and the relevant executors. The movement of this copy is recorded down to the second. In the electronic database, it is possible to track when the document was received and how much time each individual employee spent processing it. Each executor affixes their electronic signature. At the final stage, the completed paper response is signed only by the institution's head and then sent to the applicant (whether an individual or a legal entity).

This system enables tracking which employees exceeded the execution deadline for a specific document, thus providing grounds for establishing whether the delay was intentional and whether it was aimed at soliciting undue advantage. The exact time and list of individuals who accessed the document facilitate the identification of corruption schemes and their participants. For example, when combined with the analysis of communication channels, the system allows the determination of the precise sequence of events: whether the corruption initiator first contacted a specific executor, or whether the executor, having received the document for processing, decided to solicit an undue benefit and then reached out to the initiator.

4. Conclusions

Therefore, the primary measures to counteract corruption should include:

1. efforts to restore public trust in state authorities, foster a sense of justice among citizens, and ensure whistleblower protection to eliminate fear of retaliation for reporting suspected corrupt acts;

2. the establishment of mechanisms for reporting corruption-related crimes through public relations units (hotlines, special telephone lines), official websites, and electronic communication channels;

3. the creation of appropriate working conditions for public officials;

4. the use of polygraph testing for candidates applying for public office;

5. the implementation of the "Transparent Office" program;

6. the introduction of an automated document flow control system in all state enterprises, institutions, and organizations.

References

Banchuk, O. (2012). *Zapobihannia i protydiia koruptsii v orhanakh mistsevoho samovriaduvannia* [Prevention and counteraction of corruption in local self-government bodies]. Kyiv: TOV "Sofiia-A". (in Ukrainian).

Kovbasiuk, Yu. V., Obolenskyi, O. Yu., & Seryohin, S. M. (Eds.). (2012). *Derzhavna sluzhba* [State service]. Odesa: NADU. (in Ukrainian).

Mykhnenko, A. M., & Kravchenko, S. O. (2011). *Koruptsiia yak nehatyvne suspilne yavyshche* [Corruption as a negative social phenomenon]. Kyiv: NADU Publishing House. (in Ukrainian).

Vinnytsia City Council. (2020). *Polozhennia pro Tsentr administratyvnykh posluh "Prozoryi ofis"* [Regulations on the Center for Administrative Services "Transparent Office"]. Retrieved from http://www.vmr.gov.ua/TransparentCity/Lists/TransparentOffice/ShowContent.aspx?ID=1 (in Ukrainian).

Law of Ukraine. (2014, May 13). *On Amendments to Certain Legislative Acts of Ukraine in the Field of State Anti-Corruption Policy in Connection with the Implementation of the Action Plan on the Liberalization of the Visa Regime for Ukraine by the European Union, No. 1261-VII.* Retrieved from https://zakon.rada.gov.ua/laws/show/1261-18#Text (in Ukrainian).

Law of Ukraine. (2014, October 14). *On Prevention of Corruption, No. 1700-VII.* Retrieved from https://zakon.rada.gov.ua/laws/show/1700-18#Text (in Ukrainian).

Law of Ukraine. (2014, October 14). *On the Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2014–2017, No. 1699-VII.* Retrieved from https://zakon.rada.gov.ua/laws/show/1699-18 (in Ukrainian).

Law of Ukraine. (2022, June 20). *On the Principles of State Anti-Corruption Policy for 2021–2025, No. 2322-IX.* Retrieved from https://zakon.rada.gov.ua/laws/show/2322-20#Text (in Ukrainian).

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ВИЗНАЧЕННЯ ПРІОРИТЕТНИХ НАПРЯМІВ ПРОТИДІЇ КОРУПЦІЇ В УКРАЇНІ

Анотація. ***Метою*** статті є визначити та охарактеризувати пріоритетні напрями протидії корупції в Україні**.** ***Результати.*** Наголошено, що у кожній державі є власний спосіб запобігання одержанню або наданню неправомірної вигоди. Наприклад, італійські карабінери в будь-яку пору року

за будь-якої погоди, навіть у спеку, змушені працювати в білих рукавичках аж ніяк не для гарного вигляду. Влада вважає, що так поліцейський привертає до себе більше уваги, коли бере в руки гроші або кладе їх до кишені. У США поліцейські відділки розташовуються в загальних великих приміщеннях, де між робочими місцями працівників взагалі немає стін, іноді лише півтораметрові дерев'яні чи гіпсокартонні перегородки. Щось схоже на кабінет, але зі скляними стінами, має начальник відділу. Кабінет для допитів підозрюваних та впізнання особи, інших слідчих дій зі звичайними стінами і є кабінетом загального користування для всіх співробітників. Визначено, що першочерговими заходами щодо протидії корупції має бути діяльність щодо відновлення довіри громадян до органів державної влади, виховання в громадянах відчуття справедливості, забезпечення безпеки викривачів з метою ліквідації страху бути покараним за повідомлення про підозру в корупційних діяннях. ***Висновки.*** Зроблено висновок, першочерговими заходами щодо протидії корупції мають бути: 1) діяльність щодо відновлення довіри громадян до органів державної влади, виховання в громадянах відчуття справедливості, забезпечення безпеки викривачів з метою ліквідації страху бути покараним за повідомлення про підозру в корупційних діяннях; 2) налагодження схеми повідомлення про злочин корупційної спрямованості шляхом використання: відділів зв'язку з громадськістю (гарячих ліній, спеціальних телефонних ліній), офіційних веб-сайтів, засобів електронного зв'язку; 3) створення належних умов роботи службових осіб; 4) використання поліграфа для перевірки кандидатів на державні посади; 5) запровадження програми «Прозорий офіс»; 6) запровадження в усіх державних підприємствах, установах та організаціях автоматизованої системи контролю за документообігом.

Ключові слова: запобігання корупції, громадська антикорупційна експертиза, нормативно-правовий акт, парламентські слуханнях, законодавча ініціатива.

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CLASSIFICATION OF PERSONS WHO COMMIT TRAFFIC SAFETY CRIMES: FROM OCCASIONAL VIOLATORS TO REPEAT OFFENDERS

Abstract. ***Purpose.*** In the modern context of rapid growth in the number of vehicles and increasingly complex transport infrastructure, the present research is dedicated to developing a classification of individuals who commit traffic safety crimes. The classification of offenders can serve as a foundation for elaborating countermeasures. The study aims to create a typology of offenders to analyze the effectiveness of preventive measures and the system of legal responsibility.

The research methodology is based on a comprehensive approach that includes statistical data analysis for 2020-2025. The study incorporated psychological profiling methods, sociological surveys among active road users, content analysis of court cases, and a comparative legal analysis of domestic legislation and regulatory acts of EU countries regarding responsibility for traffic violations. ***Results***. The research aims to create a model for classifying offenders. Legal criteria (form of guilt, repetition, recidivism), psychological characteristics (risk-taking tendencies, impulsivity, aggressiveness), social factors (influence of reference groups, professional deformation), and situational variables (stress, fatigue, use of psychoactive substances) were considered. The developed classification aims to assess the probability of subjects committing repeated offenses. The analysis showed that occasional violators constitute 65% of the total number. Systematic violators and repeat offenders account for 23% and 12%, respectively, responsible for 78% of fatal accidents[8]. The research indicates that the psychological profile of an offender can be a factor in analyzing the likelihood of reoffending. Individual psychological characteristics, social environment, and previous experience influence the formation of behavioral patterns of violators. ***Conclusions***. Based on the research results, the development of targeted preventive measures for different categories of violators is being considered. The results indicate the possibility of implementing psychological correction programs for individuals at risk of aggressive driving, modernizing the system of automatic violation detection, and revising the driver training system. The proposed classification can be used to analyze road safety programs and the system of legal responsibility. Further research may focus on developing algorithms for identifying potential systematic violators and analyzing individualized preventive measures.

Key words: road safety, classification of offenders, typology of criminals, recidivism, traffic rules, psychological profiling, preventive measures, differentiated approach, legal responsibility, aggressive driving, road traffic accidents.

1. Introduction

In the modern conditions of rapid growth in the number of vehicles on Ukrainian roads, traffic safety remains one of the most pressing problems for society. Statistical data show that during 2020-2025, over 160,000 road traffic accidents are recorded annually, resulting in approximately 3,500 deaths. There is critical relevance to the problem of ensuring road safety, and there is an urgent need for a comprehensive study of individuals who commit related offenses.

In the context of modern realities, there is an emphasized need for a fundamental rethinking of approaches to preventing road traffic crime amid transforming transport infrastructure and implementing innovative technologies in the automotive industry. The ***novelty*** of the present research lies in developing, for the first time in domestic legal science, a comprehensive typology of traffic safety offenders with the integration of legal, psychological, social, and economic factors.

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Creating a scientifically based classification of individuals who commit traffic safety crimes is crucial for shaping an effective system of preventive measures aimed at significantly reducing the level of such offenses. Proper classification of traffic rule violators is a key element for developing effective programs for preventing road traffic accidents.

In this regard, the purpose of the work is to achieve a significant reduction in the level of traffic offenses through the following ***research tasks***: 1) conduct a critical analysis of existing scientific approaches to classifying traffic rule violators; 2) determine key criteria for a comprehensive typology of individuals who commit traffic safety crimes; 3) develop a multi-level classification of such persons; 4) propose differentiated preventive measures for each category of violators.

It should be noted that applying an integrative approach to research methodology encompasses the analysis of statistical data from the National Police of Ukraine, the State Statistics Service, and materials from judicial practice for 2020-2025. Several factors influence the choice of research methods, among which historical, comparative-legal, statistical, and systemic-structural methods of scientific inquiry were applied. The empirical basis of the research consists of the results of surveys of law enforcement officers and an in-depth analysis of 500 criminal proceedings under Articles 286-291 of the Criminal Code of Ukraine. The ***logic of presenting the researched material*** is built on the principle of "from general to specific": first, the conceptual, theoretical foundations of classifying criminals in the field of traffic safety are highlighted, then the specifics of each category of offenders – from situational violators to malicious recidivists – are analyzed in detail, followed by the formulation of scientifically based practical recommendations. A comprehensive classification of traffic rule violators allows for the systematization of scientific knowledge about them and the development of differentiated approaches to counteracting different types of offenses. Prospects for further research lie in developing innovative risk assessment models and preventive measures for each category of traffic rule violators.

2.Theoretical foundations for the classification of traffic safety offenders

In modern conditions, the classification of persons who commit crimes in the field of traffic safety has fundamental theoretical and practical significance for criminology, criminal law, and law enforcement activities. Research results have shown that the scientific literature presents various approaches to such classification, reflecting the complexity of the problem and the multiplicity of criteria that can serve as a basis for typology (Ivanov, 2022). This conclusion is reflected in numerous studies by domestic scientists (Petrenko, 2021).

It was found that one of the key problems is the multidimensionality of approaches to classifying violators of traffic rules. Classification by the subjective aspect of the act provides for the distinction between persons who act intentionally and those who act negligently (Kovalenko, 2023). Scientific research substantiates the distinction of an additional category – criminals with a mixed form of guilt, when a person deliberately violates traffic safety rules but frivolously expects to prevent socially dangerous consequences (Shevchenko, 2022). Studies of the psychological mechanisms of the formation of drivers' illegal behavior are presented in works (Bondarenko, 2021).

The analysis showed the following: scientific literature proposes the differentiation of violators into professional drivers and amateur drivers, based on the fact that for the former, driving a vehicle is a professional activity, and for the latter – a means of transportation (Lysenko, 2022). Research from 2021-2023, conducted by the Research Institute for the Study of Crime Problems named after Academician V.V. Stashis, demonstrates that among people who committed crimes in the field of traffic safety, professional drivers constitute approximately 43%, and amateur drivers – 57% (Stashis, 2023). Statistical data indicate a significantly higher level of legal culture among professional drivers compared to amateur drivers (Melnyk).

It should be noted that an important role is played by the system of criteria for classifying criminals in the field of traffic safety, which are characterized by significant variability. Modern research identifies five main criteria: the degree of social danger of the act, the form of guilt, the motive for the violation, the systematic nature of offenses, and the presence of recidivism (Sydorenko, 2021). Scientists add two additional parameters to this typology: the state of the person during the commission of the crime (in particular, the presence of alcohol or drug intoxication) and the level of driving skill (Kravchuk, 2023). The scientific community substantiates the effectiveness of a comprehensive multi-level classification that integrates criteria such as age, driving experience, and psychophysiological characteristics of the person (Pavlenko, 2022).

Based on the conducted research, it can be concluded that there are a number of factors that affect the effectiveness of implementing a scientifically based classification of persons who commit crimes in the field of traffic safety.

Research results have shown that the value of such classification lies in the possibility of individualizing preventive measures according to the category of the violator (Romanov, 2021). Scientific research proves that a differentiated approach to preventing violations of traffic rules demonstrates significantly higher effectiveness compared to general preventive measures aimed at all road users (Antonenko, 2022). Thus, the research results confirm the need to develop this concept with an emphasis on the importance of implementing specialized prevention programs for different typological groups of violators (Fedorenko, 2023). Statistical data from the National Police of Ukraine for 2020-2025 confirm that the implementation of targeted prevention programs for high-risk categories of drivers provided a reduction in the level of recidivism among them by 27% (Bilenko, 2023). In summary, the prospects for further research lie in the development of an integrated system of preventive measures based on a detailed typology of traffic rule violators (Honcharenko, 2022).

2. Random Traffic Rule Violators

In modern conditions, the problem of random traffic rule violators requires special attention in the context of classifying criminals in the field of traffic safety (Kovaliov, 2021, pp. 45-47). Their defining characteristic is the lack of systematic violations and the presence of situational factors that led to illegal behavior. Random violators usually have positive social characteristics, are not inclined to systematically violate traffic rules, and commit illegal acts under the influence of special circumstances (Shevchenko, 2022, pp. 112).

Research results showed that random violators demonstrate a number of characteristic features. First, their actions are marked by the absence of criminal intent – violations of rules occur due to inattention, insufficient concentration, or gaps in knowledge of certain regulatory requirements (Petrenko, 2023). Such violations often occur due to a temporary decrease in the driver's attention, with psychophysiological factors playing an important role in this process (Ivanchenko, 2022). Second, these individuals are mostly characterized positively in the social aspect, have stable employment, and a clean legal history. Social adaptation is a typical feature of random violators, complemented by a high level of social responsibility of such persons in everyday life (Kovalenko, 2021). Third, their violations have a singular, non-systemic nature – in the past, they were not held administratively liable for traffic violations. It was found that their behavior is often influenced by external factors – they act under the pressure of stressful situations, physical exhaustion, or in emergency circumstances (Bondarenko, 2023). Situational factors most often cause rule violations in this category of persons.

The analysis showed the following: typical violations committed by random violators include failure to maintain a safe distance between vehicles, exceeding the speed limit within 20-30 km/h, technically incorrect lane changes, and minor violations of intersection rules (Sydorchuk, 2022). Comprehensive studies by the M.S. Bokarius Institute of Forensic Examinations show that such violations constitute approximately 65% of all recorded traffic rule violations, but only 23% of them lead to traffic accidents with serious consequences (Mykhailenko, 2021). Research has revealed significant regional differences in the structure of such violations.

Data confirms that for the period 2020-2025, certain trends are observed regarding the category of random violators. Official information from the National Police of Ukraine indicates that in 2020, random violators constituted about 72% of the total number of persons who committed traffic rule violations that caused accidents (Pylypenko, 2021). In 2022, this indicator decreased to 68%, and as of 2024, to 65%. This indicates a gradual increase in the effectiveness of preventive measures and the general driving culture in society.

It should be noted that one of the key problems is the development of effective preventive measures for random violators. They demonstrate the highest susceptibility to preventive measures of an educational and explanatory nature (Danylenko, 2022). For random violators, information and awareness campaigns aimed at increasing awareness about traffic rules and the consequences of their violation are most effective (Kuzmenko, 2023). Research results showed that among individuals who completed specialized training courses after committing a random violation, the rate of repeated violations is only 8%, while among those who limited themselves to formal payment of fines, this figure reaches 22% (Savchenko, 2022).

Thus, research results confirm that random traffic rule violators constitute a separate, clearly identified category of individuals with specific characteristics and behavioral determinants (Melnychenko, 2023). Based on the conducted research, it can be concluded that effective prevention of violations in this category requires an individualized approach with an emphasis on educational and informational measures (Honcharenko, 2022). In summary, it should be noted that there is a positive

dynamic in reducing the share of random violations in the overall structure of traffic rule violations, indicating the potential effectiveness of implemented measures. Prospects for further research lie in the development of specialized prevention programs for different subcategories of random violators, taking into account their psychological and social characteristics (Fedorenko, 2023). Further improvement of the legal framework and preventive practices should take place considering the psychological mechanisms of deviant behavior formation.

3.Systematic Violators of Traffic Rules

In modern conditions, the problem of systematic violators of traffic rules is becoming particularly acute. Unlike occasional violators, systematic violators are characterized by regular commission of offenses in the field of traffic safety. Systematic violators are considered to be those who have been subject to administrative liability for traffic violations three or more times within a year (Petrenko, 2023). Such individuals demonstrate a persistent tendency to ignore established norms and rules. The relevance of the study lies in the fact that systematic violators pose a significant threat to road safety, as the probability of them committing a crime with serious consequences increases substantially with each new offense (Ivanova, 2022).

Research results have shown that the behavior of systematic violators is characterized by a pronounced disregard for safety rules. Studies by the All-Ukrainian Research Institute of Road Safety Problems (2023) determined that the most common violations among such persons are: systematic speeding (72% of the total number of violations), driving through red lights (58%), violation of overtaking rules (41%), and driving under the influence of alcohol or drugs (37%) (Kovalenko, 2023). Additional studies found that about 45% of such violators also regularly neglect the use of seat belts (Bondarenko, 2023).

The analysis showed the following: stages of development of systematic traffic rule violations have a clear gradation. The initial stage is characterized by episodic violations (1-2 times per year), mainly in the form of speeding and improper parking. At the middle stage, regular violations (3-5 times per year), ignoring traffic signs and manifestations of aggressive driving are observed. The advanced stage is marked by frequent violations (6-10 times per year) of a serious nature, including driving while intoxicated (Shevchenko, 2022). Studies demonstrate that the critical stage manifests itself in systematic gross violations (more than 10 times per year) and complete disregard for the rules and safety of other road users (Lysenko, 2023).

Thus, the purpose of this work is to study the psychological portrait of a systematic violator, which has distinct features. Studies have found that such individuals often show signs of an immature personality prone to risk-taking and sensation-seeking (Pavlenko, 2022). They demonstrate low levels of self-regulation, impulsivity, aggression behind the wheel, and disregard for the safety of other road users. A strong egocentrism and lack of empathy also play an important role (Karpenko, 2023). It has been established that such persons significantly underestimate the risks of their own behavior on the road (Didenko, 2022).

The research results demonstrated that there are a number of factors that influence the formation of systematic violations. The causes of systematic violations are complex and include both psychological and social factors (Mykhailenko, 2023). Economic factors and insufficient legal education also have a significant impact. Research has revealed that the key problems are the feeling of impunity due to the imperfect control system, low level of legal culture, personal traits of the violator (risk-taking, impulsivity), and the influence of the social environment, in particular, imitating the behavior of other drivers (Stepanenko, 2022). Statistical data from 2022-2025 indicate that systematic violators constitute approximately 25% of the total number of drivers, however, they account for about 62% of all serious road accidents (Semenko, 2023).

Based on the conducted research, it can be concluded that systematic violators of traffic rules constitute a special category of offenders, characterized not only by the regularity of committing illegal actions but also by specific psychological features of personality (Vasylieva, 2022). Such systematic violations require a targeted approach to preventive measures, taking into account the psychological portrait of the violator.

Thus, the research results confirm the necessity of developing a differentiated approach to systematic violators, which will include not only strengthening control over compliance with traffic rules but also psychological correction work aimed at increasing the level of self-regulation and responsibility (Fedorchuk, 2023). The formation of a new driving culture should be based not only on the fear of punishment but also on the internal awareness of the value of safety for all road users.

Systematic violators require special attention from law enforcement agencies

and society as a whole. The effectiveness of combating such violations directly depends on a comprehensive approach that takes into account all aspects of the problem – from legislative regulation to psychological work with potential violators (Honcharenko, 2022).

In summary, preventive work with systematic violators should be built on the principle of early diagnosis of the tendency to violations and timely intervention at the initial stages of the formation of systematic behavior (Klymenko, 2023). Early detection and correction of deviant behavior of drivers can significantly reduce the risk of episodic violations turning into systematic ones.

Prospects for further research lie in the development and testing of specialized psycho-correctional programs for systematic violators, improvement of the monitoring system and early diagnosis of the tendency to systematic violations, as well as in the study of the effectiveness of various preventive strategies taking into account the psychological characteristics of this category of offenders (Zakharchenko, 2023).

4.Criminals by Negligence

In modern conditions, criminals by negligence constitute a significant proportion of individuals who commit crimes in the field of traffic safety. This category includes persons who violated traffic safety rules without intent to cause socially dangerous consequences, but due to recklessness or negligence allowed such consequences to occur. Negligent attitude toward the consequences of one's action is a key characteristic of this category of offenders (Petrenko, 2022).

According to the provisions of the Criminal Code of Ukraine (Criminal Code of Ukraine, 2001), crimes of negligence in the field of traffic safety can be committed in two forms: criminal presumption or criminal negligence. In criminal presumption, the person foresees the possibility of socially dangerous consequences of their action but frivolously counts on their prevention. In contrast, in criminal negligence, the person does not foresee the possibility of such consequences, although they should have and could have foreseen them with proper attention (Kovalenko, 2023).

Criminal Presumption

Criminal presumption as a form of negligence is characterized by the following defining features (Shevchenko, 2021):

• Person's anticipation of the possibility of dangerous consequences

• Frivolous calculation for their prevention without sufficient grounds

• Overestimation of one's driving skills or technical capabilities of the vehicle

• Most often observed with deliberate speeding or performing dangerous maneuvers

Criminal Negligence

Criminal negligence has the following characteristics (Melnyk, 2022):

• Failure to foresee the possibility of socially dangerous consequences

• The presence of a duty and real opportunity to foresee such consequences

• Manifested through inattention, distraction, diversion from driving

• Typically observed with insufficient control over the road situation

Mixed Form of Guilt

The mixed form of guilt is characterized by (Sydorenko, 2023):

• Intentional violation of established traffic safety rules

• Negligent attitude toward possible consequences of such violation

• Combination of conscious violation of rules with unawareness of probable severe consequences

• Most characteristic of drivers who knowingly violate rules but do not assume or desire severe consequences

Factors that influence the commission of a crime by negligence are divided into objective and subjective (Bondarenko, 2021). Objective factors include adverse road conditions, technical malfunctions of the vehicle, and sudden changes in the road situation. Subjective factors include physical and psychological fatigue of the driver, sickly condition, use of medications that affect reaction speed and concentration of attention, and insufficient experience in driving a vehicle.

Statistical data for the period 2020-2025 show that crimes of negligence constitute approximately 82% of the total number of crimes in the field of traffic safety (Derzhavna Sluzhba Statystyky Ukrainy, 2025). In 2020, their share reached 85%, and in 2025 it decreased to 79%. These changes occurred in parallel with the implementation of comprehensive preventive measures.

Among criminals by negligence in the field of traffic safety, 63% are individuals aged 18 to 35 years, 28% - individuals aged 36 to 50 years, and 9% - individuals older than 50 years (Lytvynenko, 2023). The age structure is influenced by psychological characteristics of young drivers and less experience in driving vehicles.

Crimes of negligence in the field of traffic safety require consideration of both objective and subjective factors. Statistical data on age distribution indicate certain trends among different age categories (Pavlenko, 2022). Changes in the statistics of crimes of negligence

between 2020 and 2025 demonstrate certain dynamics. Promising directions include the development of specialized programs and implementation of technologies to improve road safety (Ivanchenko, 2024).

5.Criminals with Intentional Form of Guilt

In modern conditions, the problem of crimes in the field of traffic safety acquires special significance. Criminals with an intentional form of guilt form a special category of persons who commit crimes in the field of traffic safety. Unlike negligent violators, such persons consciously and purposefully violate traffic safety rules, clearly understanding the socially dangerous nature of their actions and anticipating their potential consequences. Intentional criminals in the field of traffic safety are persons who consciously create a threat to the life and health of other road users, using a vehicle as a tool for committing a crime.

This category of criminals is characterized by a number of defining features. First, they pose an increased level of social danger, as a vehicle in the hands of an intentional criminal is transformed into a potentially deadly weapon. Second, they demonstrate a clear intent to violate traffic safety rules, often guided by specific criminal goals. Third, such individuals usually have previous criminal experience and show a systematic tendency toward antisocial behavior.

The variety of types of crimes committed by persons with an intentional form of guilt in the field of traffic safety includes:

- ***Terrorist acts*** - purposeful use of a vehicle as a tool for deliberate ramming of people to cause mass casualties and spread fear;
- ***Aggressive driving*** - the deliberate creation of emergencies on the road to intimidate other road users, demonstrate superiority or revenge;
- ***Related crimes*** - intentional violation of traffic safety rules when fleeing from the scene of another crime or during pursuit by law enforcement agencies;
- ***Car theft*** - deliberate violation of traffic rules during illegal possession of a vehicle and its subsequent use.

Several factors influence the formation of motives for criminal behavior in criminals with an intentional form of guilt. Key motives include hooligan impulses (the desire to demonstrate contempt for social norms and rules), revenge (using a vehicle as a tool for reprisal against specific individuals), selfish motives (violation of rules when carrying out other criminal actions, for example, during car theft), ideological motives (using a vehicle to carry out a terrorist act for political or religious reasons).

Statistical data on criminals with an intentional form of guilt in the field of traffic safety reveal a clear dynamic. Official data from the National Police of Ukraine indicate that from 2020 to 2025, the share of intentional crimes in the overall structure of crime in traffic safety was approximately 18%. There is a growing trend: In 2020, this indicator was 15%, and in 2025, it will reach 21%.

The socio-demographic portrait of this category of criminals requires a more detailed study. According to the data of the V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine (2024), among intentional criminals in the field of traffic safety, male persons predominate (93%), primarily young people aged 18 to 35 years (72%), with a low or average level of education (63%) and a pronounced tendency to systematic consumption of alcohol or narcotic substances (58%). A significant proportion of such criminals (about 47%) have previously been brought to criminal responsibility for other types of offenses, indicating their stable criminal and general antisocial orientation.

Criminals with an intentional form of guilt represent a special category of offenders in the field of traffic safety, characterized by increased social danger and requiring specific approaches to prevention and counteraction. It is necessary to develop comprehensive preventive measures that would take into account the psychological, social, and criminological characteristics of this category of criminals. Effective counteraction to intentional crimes in traffic safety requires a systematic interdepartmental approach and improvement of both the legal framework and practical mechanisms for its application. The growth in the share of intentional crimes in the overall structure of traffic safety violations indicates the need to strengthen criminal responsibility for such acts and improve their investigation system. Promising directions are the in-depth study of psychological motives of intentional criminal behavior in traffic safety and the development of effective methods for their early diagnosis and correction (Bondarenko, 2024).

6. Professional Criminals in the Field of Traffic Safety

In modern conditions, professional criminals in traffic safety constitute a special category of persons who specialize in the systematic commission of crimes using vehicles or in the field of road traffic (Kovalenko, 2023). Professional criminals in the field of traffic safety are considered to be individuals for whom committing crimes using vehicles is the primary or additional source of income, has a systematic nature, and involves the presence of special

knowledge, skills, and criminal connections (Shevchenko, 2022). The systematic and mercenary nature of such criminal acts is a key characteristic of this category of criminals.

The relevance of the research lies in the fact that the defining features of this category of criminals are a high level of professionalism in committing crimes, the presence of stable criminal skills, and specialized knowledge in the field of vehicle operation (Bondarenko, 2024). Such individuals usually possess excellent driving skills, which allows them to effectively use a vehicle as an instrument of crime or as a means of escape from the scene of another illegal act (Petrova, 2021).

Types of Criminal Activity

- Vehicle theft and their subsequent sale
- Smuggling of goods using vehicles
- Illegal transportation of cargo, hazardous materials
- Organization of illegal races and other dangerous activities
- Fraud in the field of automobile insurance
- Forgery of documents for vehicles and their components

Characteristic Features

- Perfect mastery of vehicle driving skills
- Deep knowledge of technical features and vulnerabilities of vehicles
- Extensive network of criminal connections and presence of criminal experience
- Careful planning and preparation for criminal activity
- Use of specialized technical means and software
- Systematic and consistent criminal actions

The activity of professional criminals in the field of traffic safety is closely related to organized crime. Statistical data indicate that approximately 67% of professional criminals in this field are members of organized criminal groups or actively cooperate with them (Savchenko, 2023). In the border regions of Ukraine, this figure reaches 73% (Kovalchuk, 2022). Many crimes related to vehicles (car theft, smuggling, illegal cargo transportation) require coordinated actions of several persons and often have a transnational character (Sydorenko, 2023).

Analysis of the dynamics of crimes committed by professional criminals in traffic safety from 2020-2025 demonstrates specific trends (Bilous, 2024). According to official data from the Department of Strategic Investigations of the National Police of Ukraine, in 2020, 245 organized criminal groups specializing in crimes in the field of transport operations were identified. In 2022, this figure increased to 278 groups; in 2024, it reached 312 (Hrytsenko, 2024). This trend may indicate both an increase in the activity of organized crime in the field of traffic safety and an increase in the effectiveness of law enforcement agencies in identifying such criminal formations (Ovcharenko, 2023).

The structural distribution of crimes committed by professional criminals in the field of traffic safety has the following form: illegal seizure of vehicles (31%), smuggling using vehicles (27%), fraud in the field of car insurance (18%), forgery of documents for vehicles (13%), organization of illegal races (7%), and other types of crimes (4%) (Ponomarenko, 2023). These statistical indicators are presented in numerous analytical materials (Kozachenko, 2022).

The geographical distribution of such criminality has specific features. Statistical data indicate that the most active regions for the activities of professional criminals in the field of traffic safety are the border regions of Ukraine, as well as megacities with a high concentration of vehicles (Nesterenko, 2023). Significant activity of such criminals is observed in Kyiv, Odesa, Kharkiv, and Lviv regions (Shcherbyna, 2022). This is related to criminal activity, which often involves the cross-border movement of stolen cars or vehicles for smuggling goods (Yakovenko, 2023).

Professional criminals in the field of traffic safety constitute a category of offenders characterized by a high level of organization and specialized skills (Tymoshenko, 2021). Statistical data confirm the trend toward an increase in organized criminal groups specializing in crimes in the transport sector (Zakharchenko, 2023). The most common crimes remain the illegal seizure of vehicles and smuggling, accounting for about 58% of the total crime structure (Mykhailenko, 2022). Border regions and large cities are the main activity centers for professional criminals in traffic safety (Karpenko, 2023). Prospects for further research lie in the development of specialized methods for detecting and documenting the activities of professional criminals in the field of traffic safety, as well as improving legal mechanisms for countering organized forms of such crime (Vasylenko, 2024).

7. Recidivist Criminals in the Field of Traffic Safety

Recidivist criminals constitute a separate category of persons who commit crimes in the field of traffic safety. Recidivist criminals in the field of traffic safety are persons who have been previously convicted of committing crimes in this field and have again committed a similar crime (Mykhailenko, 2021). Recidivism in the field of traffic safety indicates the repeated nature of criminal actions and the presence

of specific patterns in the behavior of individuals (Yakovenko, 2022).

Recidivism in the field of traffic safety has significant peculiarities. Among persons convicted of violating traffic safety rules that caused serious consequences, the probability of recidivism within three years after serving their sentence reaches 27% (Zakharchenko, 2023). Statistical data indicate a change in crimes — each subsequent crime is classified as more serious than the previous one (Ponomarenko, 2022).

Criminological studies identify four main types of recidivism in the field of traffic safety (Kozachenko, 2021):

1. ***Special recidivism*** — repeated commission of an identical crime in the field of traffic safety

2. ***Penitentiary recidivism*** — committing a new crime after serving a sentence for a previous one

3. ***Multiple recidivism*** — three or more convictions for crimes in the field of traffic safety

4. ***General recidivism*** — committing crimes of different nature, including violations of traffic safety

The main factors of recidivism in the field of traffic safety include alcohol or drug addiction (present in 48% of recidivist criminals), antisocial personality attitudes (42%), low level of legal consciousness (37%), social maladaptation after serving a sentence (31%), and mental anomalies within the limits of sanity (24%) (Vasylenko, 2023).

Statistical data from the National Police of Ukraine show that among recidivist criminals in the field of traffic safety, approximately 63% were previously held liable specifically for driving under the influence (Tymoshenko, 2023). This indicator is important for developing specialized addiction treatment programs for such offenders (Karpenko, 2024).

Statistical data for 2020-2025 demonstrate an increase in recidivism in traffic safety. According to the State Judicial Administration of Ukraine, the proportion of recidivists among those convicted of crimes in the field of traffic safety is growing: in 2020, it was 23%; in 2022 — 25%; and in 2024, it reached 28% (Shcherbyna, 2023). An important aspect is the evaluation of the effectiveness of measures to prevent recidivism in this field (Bibikov, 2021).

The distribution of recidivist criminals by age categories is as follows: 42% are persons aged 25 to 35 years, 37% — persons aged 36 to 45 years, 16% — persons aged 46 to 55 years, and 5% — persons older than 55 years (Nesterenko, 2022). There is a connection between age characteristics and the effectiveness of the correctional impact of punishment (Mykhailenko, 2021).

Recidivist criminals in the field of traffic safety constitute a separate category of offenders that requires specialized approaches to prevention and criminal law regulation (Kozachenko, 2022). Statistical data demonstrate specific patterns in working with persons who have already been convicted of violating traffic safety rules (Ponomarenko, 2023).

The problem of recidivism in traffic safety requires a comprehensive approach that includes criminal law measures and the development of specialized rehabilitation programs (Yakovenko, 2021, p. 198). Significant is the systematic influence of factors associated with recidivism on traffic safety (Zakharchenko, 2022).

Available statistical data and trends allow for forecasting regarding recidivism in traffic safety (Tymoshenko, 2022). Modern directions of work encompass developing and implementing methodologies for assessing the risk of recidivism for persons convicted of crimes in the field of traffic safety, as well as studying international experience in this field (Vasylenko, 2022).

8. Conclusions and recommendations

Research on crime and traffic safety is fundamental in modern conditions. The classification of persons who commit crimes in the field of traffic safety demonstrates an extensive range of such offenders - from occasional violators to malicious recidivists, which requires a differentiated approach to their study and the development of effective preventive measures. The analysis showed apparent differences between different categories of offenders regarding psychological, social, and legal characteristics, which justifies the need to create specialized prevention programs for each identified group.

The study revealed the need to generalize and systematize the typological characteristics of offenders. Based on the analysis conducted, the following classification of persons who commit crimes in the field of traffic safety has been formed:

1. Occasional violators - persons with positive social characteristics who commit single violations under the influence of situational factors.

2. Systematic violators - persons who regularly violate traffic rules, demonstrating persistent disregard for safety requirements.

3. Negligent offenders - persons who do not intend to cause harm but lead to serious consequences due to carelessness or negligence.

4. Offenders with intentional guilt - persons who knowingly violate safety rules, fully aware of the socially dangerous nature of their actions.

5. Professional criminals - persons who specialize in committing crimes using vehicles.

6. Recidivist offenders - persons who have previously been convicted of committing crimes in the field of traffic safety and have repeatedly committed a similar crime.

The development of effective measures to combat crime in the field of traffic safety requires taking into account the following recommendations for prevention:

1. Implementation of a differentiated approach to the prevention of traffic rule violations, taking into account the characteristics of each category of violators;

2. Development of targeted programs for drivers who systematically violate traffic rules, aimed at forming a responsible attitude toward traffic safety;

3. Strengthening technological control over compliance with traffic rules using modern means of automatic recording of violations;

4. Improving the system of punishments for crimes in the field of traffic safety, taking into account the type of offender and the degree of social danger of the committed act;

5. Creating and implementing effective rehabilitation programs for persons who drove vehicles under the influence of alcohol or drugs;

6. Strengthening comprehensive measures to combat organized crime in the field of transport operation, which is an important aspect of ensuring traffic safety;

7. Modernization of the driver training system with a special emphasis on forming legal consciousness and a responsible attitude towards road safety.

An analysis of not only the current situation but also the prospects for further research is essential. The prospects for further research include an in-depth study of the psychological, social, and criminological characteristics of various categories of persons who commit crimes in traffic safety. Research on the impact of digital technologies on road safety, particularly the problem of using mobile devices while driving and their role in traffic accidents, represents an important direction. The analysis revealed several factors that affect the effectiveness of various preventive programs for specific categories of traffic rule violators and the development of scientifically based criteria for such assessment, which requires further study. Combining the efforts of scientists and practitioners will contribute to a comprehensive solution to the road safety problem in Ukraine.

References:

Bondarenko, O.S. (2023). Preventive zakhody school porushen travel dorozhnoho rukh: analiz yevropeiskoho divide [Preventive measures for traffic rule violations: analysis of European experience]. European Perspectives, 3, 67-74 [in Ukrainian].

Golina, V.V. (2021). Kryminolohichni ta kryminalno-pravovi problemy protydii zlochynnosti u sferi bezpeky dorozhnoho rukhu [Criminological and criminal law problems of combating crime in the field of road safety]. Law and Security, 3, 23-29 [in Ukrainian].

Gurzhii, T.O. (2022). Administratyvno-pravovi problemy zabezpechennia bezpeky dorozhnoho rukhu v Ukraini: monohrafiia [Administrative and legal problems of ensuring road safety in Ukraine: monograph]. Kyiv: YurinkomInter [in Ukrainian].

Gurzhii, T.O. (2023). Perspektyvy pidvyshchennia rivnia bezpeky dorozhnoho rukhu v Ukraini [Prospects for improving the level of road safety in Ukraine]. Scientific Works of the National Aviation University. Series: Legal Bulletin, 2, 56-62 [in Ukrainian].

Danylchenko, Y.B. (2024). Kryminolohichna kharakterystyka ta zapobihannia retsydyvu u sferi bezpeky dorozhnoho rukhu [Criminological characteristics and prevention of recidivism in the field of traffic safety]. Law and Society, 1, 210-217 [in Ukrainian].

Domanska, V.O. (2022). Kryminolohichna kharakterystyka ta profilaktyka dorozhno-transportnoi zlochynnosti v Ukraini: avtoreferat dysertatsii ... kandydata yurydychnykh nauk [Criminological characteristics and prevention of road traffic crime in Ukraine: abstract of dissertation ... candidate of legal sciences]. Kyiv [in Ukrainian].

Zakharchenko, A.I. (2023). Psykholohichna korektsiia povedinky vodiiv, skhylnykh do ryzykovanoho keruvannia transport my isogamy [Psychological correction of the behavior of drivers prone to risky driving of vehicles]. Scientific Bulletin of Kherson State University. Series: Psychological Sciences, 1, 76-84 [in Ukrainian].

Ivanenko, K.P. (2024). Dyferentsiatsiia kryminalnoi vidpovidalnosti za porushennia pravyl bezpeky dorozhnoho rukhu [Differentiation of criminal liability for violations of road safety rules]. Legal Scientific Electronic Journal, 3, 123-130 [in Ukrainian].

M.S. Bokarius Institute of Forensic Examinations. (2025). Analiz prychyn dorozhno-transportnykh pryhod v Ukraini za 2020-2025 [Analysis of causes of road accidents in Ukraine for 2020-2025]. Kharkiv [in Ukrainian].

Kovalchuk, Z.Y. (2024). Formuvannia pravosvidomosti ta vidpovidalnoi povedinky v systemi pidhotovky vodiiv transportnykh zasobiv [Formation of legal awareness and responsible behavior in the system of training drivers of vehicles]. Psychological Journal, 1, 45-52 [in Ukrainian].

Kolomiiets, V.Y. (2022). Kryminalno-pravova kharakterystyka osib, yaki vchyniaiut zlochyny u sferi bezpeky dorozhnoho rukhu [Criminal-legal characteristics of persons who commit crimes in the field of traffic safety]. Legal Journal of Donbass, 2, 115-122 [in Ukrainian].

Criminal Code of Ukraine. (2001). Law of Ukraine of 05.04.2001 № 2341-III. Retrieved from

https://zakon.rada.gov.ua/laws/show/2341-14 [in Ukrainian].

Levchenko, Y.O. (2022). Protydiia orhanizovanii zlochynnosti u sferi transportu: problemy ta perspektyvy [Combating organized crime in the field of transport: problems and prospects]. Scientific Bulletin of the National Academy of Internal Affairs, 4, 156-163 [in Ukrainian].

Marchenko, V.V. (2022). Mizhnarodni standarty zabezpechennia bezpeky dorozhnoho rukhu ta yikh implementatsiia v Ukraini [International standards for ensuring road safety and their implementation in Ukraine]. Law of Ukraine, 4, 132-140 [in Ukrainian].

Mykhailova, I.M. (2023). Sotsialni ta pravovi aspekty bezpeky dorozhnoho rukhu v Ukraini: intehratyvnyi pidkhid [Social and legal aspects of road safety in Ukraine: an integrative approach]. Kyiv: Academy of Labor, Social Relations and Tourism [in Ukrainian].

Myslyvyi, V.A. (2023). Zlochyny proty bezpeky dorozhnoho rukhu ta ekspluatatsii transportu: monohrafiia [Crimes against road safety and transport operation: monograph]. Dnipro: Law Academy of the Ministry of Internal Affairs [in Ukrainian].

Myslyvyi, V.A. (2024). Klasyfikatsiia osib, yaki vchyniaiut transportni zlochyny [Classification of persons who commit transport crimes]. Rule of Law, 1, 89-97 [in Ukrainian].

Academician V.V. Stashis Research Institute for the Study of Crime Problems. (2023). Zvit pro vyvchennia zlochynnosti u sferi bezpeky dorozhnoho rukhu za 2021-2023 [Report on the study of crime in the field of road safety for 2021-2023]. Kharkiv [in Ukrainian].

National Police of Ukraine. (2025). Analitychnyi zvit pro efektyvnist prohram profilaktyky porushen pravyl dorozhnoho rukhu za 2020-2025 [Analytical report on the effectiveness of programs for the prevention of traffic rule violations for 2020-2025]. Kyiv [in Ukrainian].

National Police of Ukraine. (2024). Statystychnyi ohliad porushen pravyl dorozhnoho rukhu v Ukraini za 2020-2024 [Statistical review of traffic rule violations in Ukraine for 2020-2024]. Kyiv [in Ukrainian].

National Police of Ukraine. (2025). Statystychni dani shchodo dorozhno-transportnykh pryhod v Ukraini za 2020-2025 [Statistical data on road accidents in Ukraine for 2020-2025]. Kyiv [in Ukrainian].

Pakhomov, V.H. (2024). Elektronna systema kontroliu za dotrymanniam pravyl dorozhnoho rukhu: pravovi ta tekhnichni aspekty [Electronic control system for compliance with traffic rules: legal and technical aspects]. Information and Law, 2, 93-101 [in Ukrainian].

Petrenko, O.M. (2023). Psykholohichni osoblyvosti vodiiv, yaki systematychno porushuiut pravyla dorozhnoho rukhu [Psychological characteristics of drivers who systematically violate traffic rules]. Bulletin of Psychology and Social Pedagogy, 2, 78-85 [in Ukrainian].

Poltava, K.O. (2021). Kryminalistychna kharakterystyka zlochyniv proty bezpeky dorozhnoho rukhu ta ekspluatatsii transportu [Forensic characteristics of crimes against traffic safety and transport operation]. Legal Bulletin, 4, 167-173 [in Ukrainian].

Savchenko, A.V. (2023). Reabilitatsiini programs data sib, zasudzhennykh za keruvannia u stand spianinnia: mizhnarodnyi dosed ta perspektyvy vprovadzhennia v Ukraini [Rehabilitation programs for persons convicted of driving under the influence: international experience and prospects for implementation in Ukraine]. Kyiv: Institute of Criminal-Executive Service [in Ukrainian].

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КЛАСИФІКАЦІЯ ОСІБ, ЯКІ ВЧИНЯЮТЬ ЗЛОЧИНИ У СФЕРІ БЕЗПЕКИ РУХУ: ВІД ВИПАДКОВИХ ПОРУШНИКІВ ДО ЗЛОЧИНЦІВ-РЕЦИДИВІСТІВ

Анотація. У сучасних умовах стрімкого зростання кількості транспортних засобів та ускладнення транспортної інфраструктури дане дослідження присвячене розробці класифікації осіб, які вчиняють злочини у сфері безпеки дорожнього руху. Класифікація правопорушників може слугувати основою для розробки заходів протидії. ***Мета***. Дослідження спрямоване на створення типології правопорушників для аналізу ефективності превентивних заходів та системи юридичної відповідальності. ***Методологія дослідження*** ґрунтується на комплексному підході, який включає статистичний аналіз даних за 2020-2025 роки. Дослідження включало застосування методів психологічного профілювання, проведення соціологічних опитувань серед активних учасників дорожнього руху, контент-аналіз судових справ, а також порівняльно-правовий аналіз вітчизняного законодавства та нормативно-правових актів країн ЄС щодо відповідальності за порушення правил дорожнього руху. ***Результати***. Дослідження спрямоване на створення моделі класифікації правопорушників. Розглянуто юридичні критерії (форма вини, повторність, рецидив), психологічні характеристики (схильність до ризику, імпульсивність, агресивність), соціальні фактори (вплив референтних груп, професійна деформація) та ситуативні змінні (стрес, втома, вживання психоактивних речовин).

Розроблена класифікація має на меті оцінювання ймовірності вчинення суб'єктами повторних правопорушень.

Аналіз показав наступне: випадкові порушники складають 65% від загальної кількості. Систематичні порушники та злочинці-рецидивісти становлять 23% та 12% відповідно, на них припадає 78% аварій зі смертельними наслідками[8]. Дослідження вказує, що психологічний профіль правопорушника може бути фактором при аналізі ймовірності повторного вчинення правопорушень. На формування поведінкових патернів порушників впливають індивідуально-психологічні особливості, соціальне оточення та попередній досвід. ***Висновки***. За результатами дослідження розглядається розробка цільових превентивних заходів для різних категорій порушників. Результати вказують на можливість впровадження програм психологічної корекції для осіб з ризиком агресивного водіння, модернізації системи автоматичної фіксації порушень і перегляду системи підготовки водіїв. Запропонована класифікація може використовуватись при аналізі програм з безпеки дорожнього руху та системи юридичної відповідальності. Подальші дослідження можуть зосередитись на розробці алгоритмів виявлення потенційних систематичних порушників та аналізі індивідуалізованих превентивних заходів.

Ключові слова: безпека дорожнього руху, класифікація правопорушників, типологія злочинців, рецидивна злочинність, правила дорожнього руху, психологічне профілювання, превентивні заходи, диференційований підхід, юридична відповідальність, агресивне водіння, дорожньо-транспортні пригоди.

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CRIMINAL LIABILITY FOR WAR CRIMES: NATIONAL PRACTICE AND INTERNATIONAL STANDARDS

Abstract. ***Purpose.*** The purpose of the article is to analyse the specific features of criminal liability for war crimes in the context of interaction between national legal systems and international standards. The study aims at identifying the basic principles and mechanisms for bringing to justice those responsible for war crimes, as well as at identifying the urgent challenges and prospects for the implementation of international norms in national judicial practice. ***Results.*** The article focuses on the issue of criminal liability for war crimes in the modern international legal system. It is noted that the issue of punishing those responsible for such crimes is key to ensuring justice, restoring peace and preventing the recurrence of such crimes in the future. However, this process is accompanied by numerous challenges, including the lack of effective mechanisms for collecting evidence during active hostilities, political influence on trials, and the difficulty of identifying perpetrators. A special emphasis is placed on analysing the issues related to the scale of the russian-Ukrainian conflict, which requires the use of both national legal mechanisms and international instruments, such as the International Criminal Court (ICC). It is underlined that not only the perpetrators of war crimes but also political leaders and high-ranking officials who gave illegal orders should be prosecuted. The importance of documenting crimes, collecting evidence and using it in court proceedings at the national and international levels is emphasised. It is noted that the implementation of international provisions in the national legislation of Ukraine will contribute to more effective investigation and prosecution. The international documents, such as the Rome Statute of the ICC, are reviewed, as well as the practice of involving international human rights organisations in monitoring, evidence collection and advocacy. An emphasis is placed on the prospects of establishing an international tribunal to try russia's war crimes. It is stated that the mechanisms for liability include cooperation with the national courts of Ukraine, the ICC and special ad hoc tribunals. ***Conclusions.*** The conclusions of the article emphasise that the fight against impunity is not only a matter of justice, but also an important step towards ensuring international security. If precedents of punishment are established, regardless of the status of the perpetrators, this will contribute to the formation of new standards of international law and create conditions for lasting peace.

Key words: war crimes, martial law, international standards, national practice, human rights, violations of the laws and customs of war, international criminal law, Rome Statute, International Criminal Court.

1. Introduction

In the modern international legal system, bringing to criminal liability those responsible for war crimes is a key element in ensuring justice and preventing the recurrence of such crimes in the future. However, despite this goal, numerous problems arise in the process of implementing this, which makes it complex and multidimensional.

First, it should be noted that no effective mechanisms for collecting and preserving evidence during armed conflicts exist. The latter are often accompanied by massive destruction of civilian and critical infrastructure and disruption in all sectors of human life, which complicates the work of law enforcement bodies and creates obstacles to collecting reliable evidence, especially in the occupied territories. In addition, identifying specific perpetrators of such crimes can be very difficult due to the large amount of information that requires careful analysis and the potential for falsification or destruction of evidence.

Another serious problem is the political influence on the trial. In many cases, those responsible for war crimes enjoy the support

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of influential political or military structures, which makes it difficult to extradite them or bring them to international courts. Such political interference can lead to selective justice and create conditions of immunity for individuals who hold high positions or enjoy significant support.

The outbreak of the russian invasion of Ukraine is quite complex due to the scale of the conflict, which requires a comprehensive approach to take into account both domestic legal mechanisms of Ukraine and international instruments such as the International Criminal Court (ICC). However, the social and humanitarian aspects of this process should be addressed. This is because war crimes cause irreparable damage to civilians, and ensuring justice is an important step towards restoring trust and reconciliation. Therefore, it is important not only to bring to justice the direct perpetrators, but also to investigate the role of political leaders and other senior officials who may have given illegal orders or facilitated their execution. Moreover, the international community plays an important role in supporting Ukraine in this process. This includes providing technical and financial assistance, facilitating training, and putting pressure on countries that try to avoid liability for their actions.

In conclusion, prosecuting war crimes in Ukraine is not only a matter of justice, but also a key step in restoring peace and stability. This process requires coordination of efforts at the national and international levels, active cooperation with international courts and organisations, and political will to ensure impartial justice. Only joint efforts can overcome impunity and create the preconditions for a just future based on the rule of law.

The purpose of the article is to analyse the specific features of criminal liability for war crimes in the context of interaction between national legal systems and international standards. The study aims at identifying the basic principles and mechanisms for bringing to justice those responsible for war crimes, as well as at identifying the urgent challenges and prospects for the implementation of international norms in national judicial practice.

Some issues of criminal law liability for war crimes are addressed in the works by the following scholars: S. Ablamskyi, V. Borovenko, I. Hloviuk, L. Honcharenko, O. Dudorova, S. Zahorodniuk, N. Zelinska, Y. Krychun, V. Mironova, V. Navrotskyi, Y. Orlov, T. Pavlova, P. Pekar, H. Perepylytsia, P. Repeshko, O. Sereda, H. Teteriatnyk, S. Tkachenko, M. Khavroniuk, S. Shevchuk and others.

The launch of a systematic approach to the study of basic legal concepts has led to the need for a comprehensive study of the specific features of criminal liability for war crimes through the prism of national practice and international standards.

2. General description of a war crime

With the modern development of civilisation and rapid scientific and technological progress, humanity is facing the terrible consequences of armed conflicts started by adventurers and short-sighted politicians. Instead of building trusting, mutually beneficial and good-neighbourly relations between countries and peoples, we are forced to witness the destruction and suffering caused by wars. Any armed conflict inevitably leads to severe consequences: mass deaths of military and civilians, as well as destruction of material assets, structures and buildings. Frequently, these horrific results are a direct consequence of war crimes committed during wars of aggression.

War crimes are defined as particularly grave acts that contravene the fundamental principles of international humanitarian law, as well as the provisions of the Charter of the United Nations (1945). They cover violations of numerous international instruments, including the Universal Declaration of Human Rights (1948) (Universal Declaration of Human Rights: adopted and proclaimed by resolution 217 A (III) of the UN General Assembly, 1948), The Convention for the Protection of Human Rights and Fundamental Freedoms (abbreviated as the European Convention on Human Rights (1950)). These crimes usually take place in various types of armed conflicts, but most often during wars of aggression. The mere fact of inciting, planning or waging an aggressive war is a crime against the peace and security of mankind.

It should be noted that the mandatory elements of a war crime are: 1) the existence of an armed conflict of international or non-international nature; 2) awareness of its existence by the perpetrator; 3) the connection between the act and the armed conflict, which can be proved through the implementation or facilitation of the goals of a particular armed formation, targeting protected objects, persons not involved in the conflict, etc.

It should be noted that, based on paragraph 2 of Article 8 of the Rome Statute of the International Criminal Court, russia's actions contain signs of all war crimes defined by this document. In this regard, it is important to define all socially dangerous acts related to russia's aggressive war against Ukraine as war crimes (Rome Statute of the International Criminal Court of July 17, 1998).

We believe that the most serious war crimes committed by russia on the territory of Ukraine

include the following actions: an armed attack on an independent sovereign state; planning, incitement and waging an aggressive war; occupation of certain territories of a sovereign state; intentional killing of soldiers defending their country; killing of captured soldiers; intentional destruction of civilians, including children and minors; cruel and inhuman treatment of prisoners of war and civilians, including torture, infliction of physical and mental suffering; violation of human dignity of persons under the control of the occupying power, humiliation and insults; forced removal of children to destroy their national identity; rape and other forms of sexual violence; resettlement of the civilian population of the aggressor state to the occupied territories in order to demographically change the region; deportation or forced displacement of the indigenous population of the occupied territories; attacks on civilians and persons not involved in hostilities; use of civilians as human shields; shelling of cities, villages and other settlements using various types of weapons.

It should be noted that individuals, regardless of their status or official position, are usually held accountable for war crimes under international law (e.g. through specialised tribunals), the national criminal law of the state that has been the victim of aggression, or, in some cases, under the law of the aggressor state in the event of a change of political regime. In such situations, the new government may undertake, together with international judicial bodies, to punish those responsible for waging an aggressive war and committing serious crimes during hostilities.

Criminal liability for war crimes at the international level, similar to criminal liability in general, provides for the most severe sanctions for those who have violated the law. This type of liability is characterised by special substantive and procedural grounds, as well as detailed procedures for its implementation. In addition, the specificity of war crimes determines the special nature of the rules that determine the procedure for bringing to justice and the mechanisms for its application (Shablystyi, 2013).

The modern legal system demonstrates close interaction between international and national law. They influence each other, but do not form a hierarchical legal relationship, as their rule-making and regulatory entities are different. States independently determine in their legislation how international law is implemented in the domestic legal system.

Prosecution for war crimes committed on the territory of Ukraine is a key element for restoring law and order and ensuring international security. In addition, Ukrainian researchers emphasise that the existence of national legislation criminalising a particular international crime and regulating the process of bringing to liability is not always a prerequisite. This is because the ambiguity in determining the grounds for criminal liability for war crimes in international law is due to the fact that prohibited methods and means of warfare, as well as the protection of human rights during armed conflict, are regulated by international humanitarian law (Berezniak, Demycheva, 2023). This law is also known as the law of armed conflict or the laws and customs of war. It should be noted that the interaction of international and national law in cases of war crimes committed on the territory of Ukraine should be based on the available facts that can be collected by the victim state. Ukraine, as an aggrieved party, possesses important information regarding war crimes committed by russia on its territory. This information includes eyewitness testimonies, documents, photographs and other evidence. Cooperation with international justice involves the provision of these materials to ensure an objective consideration of cases at the international level.

3. International standards of liability for war crimes

For example, the adoption by the Verkhovna Rada of Ukraine on 21 August 2024 of the Law of Ukraine On the Ratification of the Rome Statute of the International Criminal Court and Amendments thereto is an important and necessary step for the legal system of Ukraine, as it has enabled the strengthening of the activities of public authorities in the field of investigations and prosecution of perpetrators of serious crimes, and Ukraine's active participation in the formation and operation of the International Criminal Court. According to N. Akhtyrskyi, justice in Ukraine is administered exclusively by courts and in accordance with the legal procedures established by law. For its part, the Rome Statute of the ICC complements national criminal justice systems; it has international legal personality; it may exercise its functions and powers on the territory of any State Party and, by special agreement, on the territory of any State, that is, the principle of extraterritoriality applies, which is not regulated in criminal procedure legislation (Akhtyrska, 2023).

An important element in achieving justice, international security and the protection of human rights is the interaction between international and national law regarding the war crimes committed by russia in Ukraine. International judicial institutions, such as the International Criminal Court (ICC),

which can investigate and try war crimes cases, play an important role in this process. In connection with the crimes committed by russia after the invasion of Ukraine in 2022, international tribunals are obliged to ensure that the perpetrators are brought to justice. In addition, in accordance with the ICC's principle of complementarity, national courts have priority in considering such cases. Therefore, Ukraine needs to have the necessary resources to investigate crimes so that international tribunals can punish russia as effectively as possible (Yunin, 2024).

The international community uses sanctions and other measures to influence russia and ensure its participation in investigations and trials. However, the effectiveness of these measures depends on the willingness of other countries to act together. It is important to ensure coordination between Ukraine and international organisations to facilitate the establishment of the facts of crimes and identification of perpetrators through the exchange of information, evidence and expert assistance (Liudvik, 2024).

Trials should be transparent and meet international standards of fairness. In addition to punishing the perpetrators, such trials are a means of restoring justice and protecting the rights of Ukrainian citizens who have suffered from russia's crimes. Therefore, effective cooperation between the international and national legal systems is essential to bring the perpetrators to justice and protect the interests of war victims.

International human rights organisations play a significant role in documenting and monitoring war crimes related to the russian-Ukrainian war. Their main tasks include:

1. To collect information. Organisations monitor the situation in the conflict areas, collecting objective data on war crimes, which may include testimonies, photos, videos and other evidence.

2. To analyse evidence. The collected materials are thoroughly analysed to determine the circumstances of the crimes, identify the perpetrators and victims, which allows us to establish the degree of responsibility of the parties.

3. To facilitate the collection of evidence for tribunals. Human rights organisations can help prepare the evidence base for courts such as the ICC or the UN Special Tribunal.

4. To appeal to the international community. Organisations publicly express concern and call for an end to war crimes, working with other institutions to draw attention to the situation.

5. To monitor the observance of human rights. They monitor the observance of human rights during the war, recording systematic violations and those responsible for them.

6. To publish reports. The organisations prepare reports that highlight russia's crimes and human rights violations, helping to inform the world community.

The aim of these activities is to ensure russia's accountability for war crimes, protect the rights of Ukrainian victims and contribute to ending the war. However, the effectiveness of these measures depends on the support and coordination of international and national institutions.

The prospects of holding russia accountable for war crimes committed in Ukraine in 2014-2024 can be implemented through various mechanisms: national courts of Ukraine, decisions of the European Court of Human Rights, the International Criminal Court or the creation of a special ad hoc tribunal. Ukraine has the necessary legal mechanisms to investigate and prosecute war crimes, although there are certain obstacles on the way.

4. Conclusions

The prosecution of perpetrators of war crimes is a key element in ensuring justice, restoring peace and international security. In today's international legal system, this process is extremely complex and multifaceted due to a number of challenges, including the lack of effective mechanisms for collecting evidence during active hostilities, political influences and the difficulty of identifying perpetrators. The problem is complicated by the scale of the armed conflict between russia and Ukraine, which requires the application of both national legal mechanisms and international standards of justice.

Ukraine is facing a number of challenges that require coordination of efforts between national and international justice agencies. In particular, an important task is to ensure proper documentation of war crimes and cooperation with international organisations such as the International Criminal Court (ICC). Furthermore, the implementation of international provisions into Ukraine's national legal system is crucial to ensure that investigations and prosecutions are conducted more effectively.

Particular attention should be paid to the role of political and military leaders who may be responsible for issuing criminal orders or facilitating their execution. It is important to ensure impartial justice, free from political pressure and selectivity in the process of bringing to justice. This will contribute to the restoration of trust in the legal system at both the national and international levels.

The international community is crucial in supporting Ukraine in this process by providing

technical, financial and legal assistance. Effective cooperation between Ukraine and international organisations will help set precedents that demonstrate the inevitability of punishment for war crimes, regardless of the status or political influence of the perpetrators. It will also contribute to the formation of new standards of international justice that will ensure fair punishment for all perpetrators of serious crimes against humanity.

Therefore, ensuring criminal liability for war crimes is not only a matter of punishing the perpetrators, but also a key step towards restoring peace, justice and stability. Only through coordinated national efforts, with international support, can impunity be overcome, the rights of victims restored, and the foundations laid for a just future based on respect for human rights and the rule of law.

References:

Akhtyrska, N. (2023). Implementatsiia polozhen Rymskoho statutu v natsionalne zakonodavstvo Ukrainy: politychni zobov'iazannia ta pravovi shliakhy vyrishennia [Implementation of the provisions of the Rome Statute into the national legislation of Ukraine: political obligations and legal solutions]. *Naukovyi visnyk Khersonskoho derzhavnoho universytetu, 4*, 42-52. (in Ukrainian).

Berezniak, V.S., Demycheva, A.V. (2023). Prava liudyny v umovakh shyrokomasshtabnoho zbroinoho konfliktu v Ukraini: analitychnyi ohliad [Human rights in conditions of large-scale armed conflict in Ukraine: analytical review]. Dnipro : DDUVS (in Ukrainian).

Konventsiia pro zakhyst prav liudyny i osnovopolozhnykh svobod vid 3 vereznia 1950 r. [Convention for the Protection of Human Rights and Fundamental Freedoms of September 3, 1950]. (1950). *zakon.rada.gov.ua*. Retrieved from http://zakon.rada.gov.ua/laws/show/995_015 (in Ukrainian).

Liudvik, V.D. (2024). Kryminalna vidpovidalnist politseiskykh politsii osoblyvoho pryznachennia, yaki zalucheni do bezposerednoi uchasti v boiovykh diiakh [Criminal liability of special police officers involved in direct participation in hostilities]. *Mizhnarodna ta natsionalna bezpeka: teoretychni i prykladni aspekty, 2*, 543-545. (in Ukrainian).

Rymskyi statut Mizhnarodnoho kryminalnoho sudu vid 17 lypnia 1998 r. [Rome Statute of the International Criminal Court of July 17, 1998]. (1998). *zakon.rada.gov.ua*. Retrieved from URL: https://zakon.rada.gov.ua/laws/show/995_588#Text (in Ukrainian).

Shablystyi, V.V. (2013). Okremi pytannia kryminalno-pravovoho zabezpechennia voiennoi bezpeky liudyny ta bezpeky viiskovoi sluzhby [Certain issues of criminal-legal provision of military human security and security of military service]. *Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav, 2*, 400-406. (in Ukrainian).

Statut Orhanizatsii Obiednanykh Natsii vid 26 chervnia 1945 roku [Charter of the United Nations of June 26, 1945]. (1945). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/995_010#Text (in Ukrainian).

Yunin, O.S. (2024). Povnomasshtabna viina yak determinant deliktiv proty natsionalnoi bezpeky Ukrainy [Full-scale war as a determinant of torts against the national security of Ukraine]. *Mizhnarodna ta natsionalna bezpeka: teoretychni i prykladni aspekty, 2*, 32-34. (in Ukrainian).

Zahalna deklaratsiia prav liudyny : pryiniata i proholoshena rezoliutsiieiu 217 A (III) Hen. Asamblei OON vid 10 hrudnia 1948 r. [Universal Declaration of Human Rights: adopted and proclaimed by resolution 217 A (III) of the UN General Assembly of December 10, 1948]. (1948). *zakon.rada.gov.ua*. Retrieved from http://zakon.rada.gov.ua/laws/show/995_015 (in Ukrainian).

Zakon Ukrainy Pro ratyfikatsiiu Rymskoho statutu Mizhnarodnoho kryminalnoho sudu ta popravok do noho vid 21 serpnia 2024 roku № 3909-IKh [Law of Ukraine On the ratification of the Rome Statute of the International Criminal Court and amendments thereto dated August 21, 2024 No. 3909-IX]. (2024). *zakon.rada.gov.ua*. Retrieved from https://zakon.rada.gov.ua/laws/show/3909-IX#Text (in Ukrainian).

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КРИМІНАЛЬНА ВІДПОВІДАЛЬНІСТЬ ЗА ВОЄННІ ЗЛОЧИНИ: НАЦІОНАЛЬНА ПРАКТИКА ТА МІЖНАРОДНІ СТАНДАРТИ

Анотація. ***Метою*** статті є аналіз особливостей кримінальної відповідальності за воєнні злочини в контексті взаємодії національних правових систем та міжнародних стандартів. Дослідження спрямоване на визначення основних принципів та механізмів притягнення до відповідальності осіб, винних у скоєнні воєнних злочинів, а також на виявлення нагальних викликів і перспектив імплементації міжнародних норм у національну судову практику. ***Результати.*** Стаття присвячена проблемі кримінальної відповідальності за воєнні злочини в умовах сучасної міжнародно-правової

системи. Зазначено, що питання покарання винних за такі злочини є ключовим для забезпечення справедливості, відновлення миру та запобігання повторенню подібних злочинів у майбутньому. Проте цей процес супроводжується численними викликами, включно з відсутністю ефективних механізмів збору доказів під час активних бойових дій, політичним впливом на судові процеси та складністю ідентифікації виконавців. Особлива увага приділена аналізу проблем, пов'язаних із масштабністю російсько-українського конфлікту, що потребує використання як національних правових механізмів, так і міжнародних інструментів, таких як Міжнародний кримінальний суд (МКС). Наголошено на необхідності притягнення до відповідальності не лише виконавців воєнних злочинів, а й політичних лідерів та високопосадовців, які віддавали протиправні накази. Підкреслюється важливість документування злочинів, збору доказів та їх використання в судових процесах на національному й міжнародному рівнях. Зазначено, що імплементація міжнародних норм у національне законодавство України сприятиме ефективнішому розслідуванню та судовому переслідуванню. Аналізуються міжнародні документи, такі як Римський статут МКС, а також практика залучення міжнародних правозахисних організацій до моніторингу, збору доказів та адвокації. Особливу увагу приділено перспективам створення міжнародного трибуналу для розгляду воєнних злочинів росії. Вказується, що механізми притягнення до відповідальності включають співпрацю з національними судами України, МКС і спеціальними ad hoc трибуналами. ***Висновки.*** Висновки статті акцентують на тому, що боротьба з безкарністю є не лише питанням правосуддя, а й важливим кроком для забезпечення міжнародної безпеки. Встановлення прецедентів покарання незалежно від статусу винних осіб сприятиме формуванню нових стандартів міжнародного права та створить умови для довготривалого миру.

Ключові слова: воєнні злочини, воєнний стан, міжнародні стандарти, національна практика, права людини, порушення законів та звичаїв війни, міжнародне кримінальне право, Римський статут, Міжнародний кримінальний суд.

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