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The monograph examines the development of the Ministry of Internal Affairs of Ukraine in the light of European integration processes, analytical work in the system of the Ministry of Internal Affairs of Ukraine, legal regulation of the activities of central executive authorities, the activities of which are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine, gender equality in the system of the Ministry of Internal Affairs. Doctrinal aspects have become the basis for the developed proposals to improve the legal and organizational support of the Ministry of Internal Affairs, the National Guard of Ukraine and the central executive authorities, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine.

The publication is intended for researchers, lecturer, post-graduate students and also heads of the law enforcement bodies.

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CONTENTS

FOREWORD **1**

CHAPTER 1
SOME ISSUES OF FURTHER DEVELOPMENT OF THE MINISTRY OF INTERNAL AFFAIRS IN UKRAINE IN THE CONTEXT OF EUROPEAN AND EURO-ATLANTIC INTEGRATION
Yarmysh O. N. **4**
1.1. Modern challenges forming priorities for the development of the Ministry of Internal Affairs of Ukraine........ 5
1.2. Prospects for the implementation of the priority *«Crime counteraction»* under the current conditions........ 8
1.3. Prospects for the implementation of the priority «*safe environment*» under the current conditions 13

CHAPTER 2
LEGAL REGULATION OF THE ACTIVITIES OF THE NATIONAL POLICE OF UKRAINE IN THE AREA OF PREVENTION
Kryvolapchuk V. O. **22**
2.1. Legal regulation of police activities........ 23
2.2. Preventive police measure in the activity of the police........ 31

CHAPTER 3
ANALYTICAL WORK IN THE SYSTEM OF THE MIA OF UKRAINE: NORMATIVE AND LEGAL REGULATION
Verbenskyi M. H. **40**
3.1. Theoretical and legal bases of analytical work in the system of the Ministry of Internal Affairs of Ukraine 41
3.2. Statutory regulation of analytical work in the system of the Ministry of Internal Affairs........ 45

CHAPTER 4
INTRODUCTION OF THE POLICY OF EQUAL RIGHTS AND OPPORTUNITIES FOR WOMEN AND MEN IN THE SYSTEM OF THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE
Protsenko T. O. **59**
4.1. Introduction of the policy of equal rights and opportunities for women and men after the reform of the Ministry of Internal Affairs of Ukraine 61

4.2. The current state of implementation of the policy
of equal rights and opportunities for women and men in the system
of the Ministry of Internal Affairs of Ukraine 66

CHAPTER 5
INTERNATIONAL AND NATIONAL SECURITY THROUGH THE PRISM OF THE CHALLENGES AND THREATS OF GLOBALIZATION: THE PROBLEM OF RECONCEPTUALIZATION STABILITY
Alieksieienko I. V. 76
5.1. «Human Security»: Essential Characteristics, Support Strategies............. 77
5.2. Modern technologies of diagnostics and terrorism prevention.
Profiling method. Role of the Ministry of Internal Affairs
in the preparation of professional profilers 81
5.3. The counter-terrorism program is the basis of civilizational stability 85

CHAPTER 6
PREPAREDNESS OF THE SYSTEM OF THE MIA OF UKRAINE FOR THE TERRITORIAL DEFENSE MISSION UNDER HYBRID THREATS
Tsyganov O. G. 101
6.1. The territorial defense mission of Ukraine under hybrid threats 102
6.2. Organizational and legal support of the Ministry of Internal Affairs
of Ukraine for combating hybrid threats and ways of its improvement 106

CHAPTER 7
ACTUALIZATION OF CERTAIN CURRENT COURSES OF FIGHTING ORGANIZED CRIME
Svyrydiuk N. P. 119
7.1. Evaluation of organized crime risks... 119
7.2. Serious and Organised Crime Threat Assessment (SOCTA) 124
7.3. Rationale for the concept of anti-criminal intelligence
of law enforcement agencies in Ukraine... 127

CHAPTER 8
PROOF OF LEGALIZATION (LAUNDERING) OF PROCEEDS OF CRIME
Korystin O. Ye. 137
8.1. Theoretical fundamentals of proof 137
8.2. Substantiation of the circumstances to be proved................................... 139
8.3. Proof of predicate crime and a list of circumstances to be proved.......... 145
8.4. Means of proof 149

CHAPTER 9
LEGAL REGULATION OF ELECTRONIC MONEY CIRCULATION (ON THE EXAMPLE OF LEGISLATION IN EU AND IN UKRAINE)
Riadinska V. O. 158
9.1. Legal regulation of circulation of electronic money in the EU 160
9.2. Normative regulation of electronic money circulation in Ukraine and the directions for its improvement in accordance with EU legislation 170

CHAPTER 10
LEGAL REGULATION OF FINANCING OF THE BODIES OF THE MINISTRY OF INTERIOR OF UKRAINE IN THE CONTEXT OF MANAGEMENT BY OBJECTIVES
Soldatenko O. V. 177
10.1. The notion of financing in the legal science 179
10.2. «Budget expenditures» as a financial and legal category 186
10.3. Legal regulation of management by objectives in the budgeting process 192
10.4. The state of financing the bodies of the Ministry of Interior of Ukraine 195

CHAPTER 11
METHODOLOGICAL APPROACHES TO STUDY THE CATEGORY OF CRIMINAL MISDEMEANOR IN CRIMINAL-LEGAL DOCTRINE
Fedotova H. V. 205
11.1. The System of Fundamental Scientific Perspectives regarding the Concept of Criminal Misdemeanor 206
11.2. Methodology for Developing the Concept of Criminal Misdemeanor 214

CHAPTER 12
MODERN TRENDS IN THE PROCEDURAL FORM DIFFERENTIATION UNDER REFORMING THE CRIMINAL JUSTICE SYSTEM OF UKRAINE
Drozd V. H. 228
12.1. Differentiation of the criminal procedural form: Doctrinal interpretation and types 229
12.2. Special pre-trial investigation as a manifestation of the criminal procedural form differentiation (according to the current legislation of Ukraine) 235

12.3. The institution of agreements as the criminal procedural
form differentiation 239
12.4. Criminal proceedings in respect of underage persons 244

CHAPTER 13
ENSURING THE SAFETY OF WITNESSES:
UKRAINIAN DIMENSION
Opryshko I. V. 253
13.1. Definition of the term «enduring of safety of witnesses»
in criminal justice 254
13.2. Legal (procedural) status of witnesses as a guarantee
of their safety during criminal justice 257
13.3. Problems of witness' legal (procedural) status of obtaining
by particular categories of individuals in criminal justice 261

CHAPTER 14
ADMINISTRATIVE AND JURISDICTIONAL ACTIVITY
OF UKRAINIAN LAW ENFORCEMENT BODIES
Pluhatar T. A. 274
14.1. The concept and features of the administrative
and jurisdictional activity of law enforcement bodies of Ukraine 275
14.2. Functions and principles of the administrative
and jurisdictional activity of law enforcement bodies of Ukraine 287

FOREWORD

Created with the aim of carrying out scientific and technical support of the activities of the system of bodies of the Ministry of Internal Affairs of Ukraine, the State Research Institute MIA Ukraine is the only scientific institution in Ukraine that demonstrates an integrated approach to ensuring law enforcement.

The combination of scientific and technical, humanitarian directing, considerable experience in the study of the specific needs for the provision of units of different directions of law-enforcement activity, the existence of unique objects and highly skilled specialists allows to carry out, at a high level, scientific and technical support of the activities of the Ministry of Internal Affairs, the National Guard of Ukraine and central executive authorities, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Ministry the Interior Ministry of Ukraine.

The purpose of this monographic research is development of proposals for improving the legal and organizational support of the activities of the Ministry of Internal Affairs, the National Guard of Ukraine and central executive authorities whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine.

The subject of the study is the development of system of the Ministry of Internal Affairs of Ukraine, taking into account European integration processes, analytical work in the system of the MIA of Ukraine, legal regulation of the activities of central executive authorities whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine, gender equality in the MIA. The subject of the study is the social relations arising in the field of legal and organizational support for the activities of the Ministry of Internal Affairs, the National Guard of Ukraine and central executive authorities whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine.

In the first section of the paper, certain issues of further development of the Ministry of Internal Affairs of Ukraine in the light of European and Euro-Atlantic integration are considered, the modern challenges, forming the priorities of the development of the system of the MIA of Ukraine, are

analyzed, prospects of realization of priorities in the modern conditions are determined.

In the second chapter of the monograph, attention is paid to the legal regulation of the activities of the National Police of Ukraine. In particular, preventive police measures, their legal basis and problematic issues of practical application are considered.

The third chapter of the monograph devoted to the analytical work of the system of the Ministry of Internal Affairs of Ukraine was explored. The theoretical and legal bases of analytical work in the system of the MIA of Ukraine are researched.

The fourth chapter addresses the issue of implementing equal rights and opportunities for women and men after the reform of the MIA of Ukraine. The present state of gender equality in the system of the MIA of Ukraine is researched.

Chapter five is devoted to international and national security through the prism of the challenges and threats of globalization.

Chapter six is devoted to the organizational and legal support of the Ministry of Internal Affairs of Ukraine for combating hybrid threats and ways of its improvement.

The seventh chapter of the monograph analyzed actualization of certain current courses of fighting organized crime. Rationale for the concept of anti-criminal intelligence of law enforcement agencies in Ukraine.

In the eighth chapter, the questions of proving the legalization (laundering) of proceeds from crime are revealed. Attention is paid to the theoretical bases of evidence, reasonable circumstances to be proved, analyzed evidence of the main offense.

The ninth chapter of the monograph examines the problems of legal regulation of the circulation of electronic money in Ukraine and EU.

The issues of Legal regulation of management by objectives in the budgeting process are considered the tenth section.

The eleventh section of the work focuses on Methodology for Developing the Concept of Criminal Misdemeanor.

Chapter twelve dedicated to Special pre-trial investigation as a manifestation of the criminal procedural form differentiation (according to the current legislation of Ukraine). Differentiation of the criminal procedural form: Doctrinal interpretation and types.

In the thirteenth chapter of the monograph, problems of witness' legal (procedural) status of obtaining by particular categories of individuals in criminal justice are considered.

The last section of the monograph raises the question of functions and principles of the administrative and jurisdictional activity of law enforcement bodies of Ukraine. Administrative and jurisdictional activity of Ukrainian law enforcement bodies.

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CHAPTER 1
SOME ISSUES OF FURTHER DEVELOPMENT OF THE MINISTRY OF INTERNAL AFFAIRS IN UKRAINE IN THE CONTEXT OF EUROPEAN AND EURO-ATLANTIC INTEGRATION

Yarmysh O. N.

INTRODUCTION

Adequate development of the Ukrainian state is impossible without the creation of a unified stable and functional system of internal affairs as a part of the national security sector. Modern challenges and threats, including hybrid ones, are driven by the impact of a complex of socio-demographic, economic, political, legal, psychological and technological factors and need system reaction, relevant transformation, both of the whole security sector and the system of the Ministry of Internal Affairs of Ukraine in particular, and inclusion of the system in the political agenda of the state.

At the same time, European integration of Ukraine obliges our state to ensure the effective functioning of the institutes, which will guarantee the supremacy of the law, the observance of human and civil rights and freedoms as well as create favourable conditions for the formation of effective cooperation with the available international institutional mechanism for peacekeeping and security maintaining both in Europe and in the world at large.

One of the integration courses is to ensure effective performance of the Ministry of Internal Affairs of Ukraine (hereinafter referred to as the MIA) as a civil law enforcement agency of a European standard, which ensures the formation of state policy in the following areas:

– safeguard for human rights and fundamental freedoms, interests of society and the state;

– crime counteraction;

– maintenance of public safety and order;

– provision of police and administrative services;

– national border control and protection of sovereign rights of Ukraine;

– organisation of civil protection, emergencies prevention and emergency response and recovery;

– migration and citizenship.

Thus, the role of the MIA is in creating conditions for the development of safe environment of life-sustaining activity, as a safety basis within the territory of Ukraine, as well as modern system of internal and external security of the state.

1.1. Modern challenges forming priorities for the development of the Ministry of Internal Affairs of Ukraine

There is a need for new approaches to identification of the position and role of the MIA, reconsideration of the principles of organization and management, definition of the priority orientations of its activities and creation of a new model of interrelation with citizens and society under the conditions of ongoing armed conflict in the eastern regions of the state and temporary invasion of part of the territory of Ukraine, crisis phenomena in the political, economic and social sector of public life, challenging crime rate in the state, high level of corruption and organized crime, economic instability and the origin of new types of threats and crimes due to armed aggression on the part of the Russian Federation, legal nihilism, outdated legal and regulatory framework in the area of public (domestic) security and civil defense, shortcomings in the legal regulation of the MIA bodies (especially during the course of wartime situation and restoring of state sovereignty of Ukraine within temporarily occupied territories).

Thus, system vision of challenges and threats, which prevail in the national security and defense, crime rate and public security situation mainly influence the ways of improving control system and optimization of the MIA activity. Moreover, there is a need for in-depth analysis of the issue concerning what services, units of the main office of the MIA, the central executive bodies the activities of which are guided and coordinated by the MIA should be reorganized, created or closed down.

The improvement of control system and optimization of the activity of the MIA of Ukraine provides for search of internal resources, identification of regional peculiarities of the development of services and units of those bodies the activity of which is guided and coordinated by the MIA,

specifics of work arrangement in cities and countryside. The modernization of the control system and activity optimization of the MIA should be performed relying on dynamic and flexible response to the current situation and citizens' needs in particular services etc[1].

As noted in the analytical report of the National Institute for Strategic Studies to the extraordinary message of Ukraine's President to the Verkhovna Rada of Ukraine on the internal and external position of Ukraine in the national security (2014), Ukraine faced the greatest threat to the entire modern history of its independence – the threat to the very existence of the Ukrainian state. The aggression started against Ukraine infringed the territorial integrity of our state and threatens its independence. At the same time, the state-aggressor applies a wide range of political, military, economic, information, cultural and other means peculiar to wars of new type. Russian has ignited mass acts of terrorism on the territory of Donetsk and Luhansk regions, armed demonstrations of secessionist rebels involving its intelligence bodies and security services[2].

Consequently, one of the main security challenges defined in the Concept for the Development for the Security and Defense Sector in Ukraine is: unresolved issues regarding the delimitation of the state border between Ukraine and the Russian Federation in offshores of the Black Sea and the Sea of Azov, non-completion of legal registration of the state border of Ukraine with the Russian Federation, the Republic of Belarus and the Republic of Moldova; perpetration of cyber-threats to automated systems of state and military control, objects of critical national infrastructure by foreign states, international criminal gangs; rate increase of the terrorist threat in the Baltic–Black Sea–Caspian region; the spread of cross-border organised crime; crisis phenomena in the national economy, failure of anti-crisis measures that cause the depletion of financial resources of the state, limit its capacities regarding financial support for the implementation of the national security policy.

Based on the content of the Concept for the Development of the Security and Defense Sector of Ukraine, the Ministry of Internal Affairs, as the central executive body which is empowered to coordinate actions of the National Police, the National Guard, the State Emergency Service, the

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[1] Hlukhoveria V. Okremi pytannia podalshoho rozvytku systemy MVS Ukrainy u svitli provedennia reformuvannia pravookhoronnoi sfery derzhavy Pidpryiemnytstvo, hospodarstvo i pravo. 2017. № 1. S. 125.

[2] Analitychna dopovid Natsionalnoho instytutu stratehichnykh doslidzhen do pozacherhovoho Poslannia Prezydenta Ukrainy do Verkhovnoi Rady Ukrainy «Pro vnutrishnie ta zovnishnie stanovyshche Ukrainy u sferi natsionalnoi bezpeky». K. : NISD, 2014. 148 s.

State Migration Service, the State Border Guard Service in the area under consideration, has to develop a set of activities which should be focused on the execution of the following tasks: to improve the level of coordination and cooperation in the security and defense sector; to introduce an effective unified system for resource planning and management using modern European and Euro-Atlantic approaches; to acquire identified basic operation (combat, special) capacities necessary for a guaranteed response to crisis situations threatening national security by virtue of the efforts and means of the security and defense sector; to ensure maximally expedient consolidation of law-enforcement activity in the area of responsibility of the Ministry of Internal Affairs of Ukraine, to promote citizens' credibility in law enforcement agencies, development of the Ministry as a civil central executive body, which ensures the formation and implementation of policies in law enforcement activity, protection of the state border, migration activity and civil defence; effective performance of the functions in spheres of crime prevention, in particular organised, and guarantee of public order by the National Police of Ukraine, as central executive body; to ensure effective implementation of the security policy in the area of protection and defence of the state border of Ukraine, as well as protection of the sovereign rights of Ukraine in its exclusive (maritime) economic zone; to ensure citizens' rights and freedoms, provision of high-quality administrative services, effective control of migration processes, effective fight against illegal migration; to give more performance capabilities the National Guard of Ukraine to carry out tasks for maintaining public safety, physical protection of critical infrastructure objects, participation in the protection and defense of the state border of Ukraine as well as support of operations of the Armed Forces of Ukraine in crisis situations threatening national security and in a special period; to update the system of application planning, control and cooperation of security and defence services during eliminating (neutralizing) immediate threats[3].

In order to prevent and eliminate the above threats and challenges to the MIA, the Strategy for the Development of the Ministry of Internal Affairs until 2020 (hereinafter referred to as the Strategy) was developed and approved by the Order of the Cabinet of Ministers of Ukraine dated November 15, 2017, № 1023-р. Today, it is a vector for the development

[3] Pro rishennia Rady natsionalnoi bezpeky i oborony Ukrainy vid 04.03.2016 «Pro Kontseptsiiu rozvytku sektoru bezpeky i oborony Ukrainy» : Ukaz Prezydenta Ukrainy № 92 vid 14.03.2016 URL: http://zakon2.rada.gov.ua/laws/show/92/2016 (data zvernennia: 05.04.2019).

of all internal affairs bodies as an integral system of the national security and defence sector of Ukraine.

The Strategy marked 7 top priorities: safe environment; crime counteraction; observance of human rights and freedoms by the internal affairs bodies; effective integrated border management and a balanced migration policy; quality and availability of services; effective governance; transparency and accountability; development of human capacity and social protection of staff[4].

According to the Regulation on the Ministry of Internal Affairs of Ukraine, the Minister of Internal Affairs determines key priorities of central executive bodies. He guides and coordinates their activity, updates them and establishes ways for completing tasks entrusted on the bodies, approves action plans of central executive bodies[5].

Within the framework of the priorities defined by the Strategy, the MIA and internal affairs bodies have to implement measures provided by the Action Plan of the Strategy for the Development of the Ministry of Internal Affairs until 2020 (now, the document is elaborated by the MIA experts and in the process of interdepartmental approval).

Taking into account the above, the focus is on the priorities for the development of the MIA system, which are caused by the current realities and challenges, taking into account the chosen course of European and Euro-Atlantic integration, as creation of a safe environment and crime counteraction.

1.2. Prospects for the implementation of the priority *«Crime counteraction»* under the current conditions

Thus, the implementation of the priority "Crime counteraction" includes the following areas of activities of the MIA and central executive bodies:

1) improvement of the organizational and legal basis for strengthening the fight against crime. In this area, the activities of the internal affairs bodies are aimed at solving the problems as follows: organized crime; terrorism; illegal crossing the state border of illegal migrants; trafficking in persons and in firearms; corruption; illicit trafficking and arms and

[4] Pro skhvalennia Stratehii rozvytku orhaniv systemy Ministerstva vnutrishnikh sprav na period do 2020 roku: rozporiadzhenniam Kabinetu Ministriv Ukrainy vid 15 lystopada 2017 r. URL: https://zakon.rada.gov.ua/laws/show/1023-2017-%D1%80 (data zvernennia: 05.04.2019).

[5] Pro zatverdzhennia Polozhennia pro Ministerstvo vnutrishnikh sprav Ukrainy: postanova Kabinetu Ministriv Ukrainy vid 28.10.2015 № 878. Ofitsiinyi visnyk Ukrainy. 2015.№ 89. St. 2972

ammunition trade; illicit drug trafficking; smuggling of goods; economic crimes; cybercrime; domestic and gender-based violence;

2) introduction of effective preventive policy for offenses hampering;

3) development and introduction of a unified electronic system for data and materials of pre-trial investigations in cooperation with authorities of the prosecutor's office and courts in order to ensure the continuity and control of pre-trial investigation.

The realization of the lines of the development of the MIA system, which is under consideration, should be ensured by constant control over the effectiveness of the implementation of the strategies and measures being implemented in order to achieve the goals defined by the state policy in the counteraction to crime.

On the one hand, it will make it possible to accomplish rapid response to challenges in security and law enforcement spheres. On the other hand, it will provide an opportunity for Ukraine to fulfill its obligations under the Association Agreement between Ukraine and the EU signed in 2014. Thus, according to Art. 1 of the Agreement, Ukraine and the EU should strengthen cooperation in the area of justice, freedom and security with a view to guarantee the rule of law and respect for human rights and fundamental freedoms.

One of the key provisions, the Association Agreement is based on, determines provisions of gradual approximation of the legislation of Ukraine to the rules and standards of the EU. It fixes specific time limits for the adjustment of the Ukrainian legislation to relevant EU acquis which vary from 2 to 10 years after the Agreement's entry into force. The Agreement provides for the concept of dynamic approximation as the EU legislation is not static and constantly develops. For this reason, the very approximation process will have a dynamic nature, and its rate of development should meet the basic EU reforms but be balanced with Ukraine's ability to implement the approximation. Ratification of the Association Agreement was a driver for the general improvement of legal regulation of the MIA and acceleration of the realisation of related legislative initiatives aimed at approximating Ukrainian legislation to the EU norms by the Verkhovna Rada of Ukraine.

In order to ensure the irreversibility of Ukraine's orientation to European and Euro-Atlantic integration, the President of Ukraine initiated to amend the Constitution of Ukraine on the consolidation of the strategic

course of Ukraine to join the EU and NATO (as of 09.09.2018, No. 9037) that was approved by the Verkhovna Rada in accordance with the established procedure. It is kept the high level of Ukraine's connection with the declarations and statements on behalf of the EU indicating shared visions and approaches in terms of regulation and relevant response to regional and global challenges. During 2018 Ukraine supported 492 from 588 statements and declarations of the EU[6].

Ukrainian party has embarked upon the implementation of the recommendations specified in the European Union Report, in particular in the area of justice, freedom, security and human rights provides for the following steps related with the above priority orientations of the development of the MIA system in combating crime, namely:

1) with the view to intensify actions of the National Police on combating organised crime in close cooperation with the European Union Advisory Mission and U.S. Embassy in Ukraine, the Office of Strategic Investigations was established within the criminal police. Effective operation of the Office will be facilitated by further demarcation of its powers with powers of other departments of the NPU.

In 2018, the law enforcement agencies of Ukraine disclosed 280 organized gangs and criminal organizations; the amount of financial losses caused by their illegal activity is UAH 192 million. The opportunities for obtaining information through the international organizations are taken (Interpol, Europol, the European Anti-Fraud Office (OLAF).

2) in 2017, two important agreements, which determine the forms and mechanisms for the cooperation, were ratified and came into force:

– Agreement on Operational and Strategic Cooperation between the European Police Office (Europol) and Ukraine enables the Parties to exchange intelligence information within the framework of criminal proceedings; to participate in cooperative activities on investigating a wide range of crimes, making a search for persons implicated in crimes and to create international cooperative investigation team;

– Agreement between Ukraine and the European Union's Judicial Cooperation Unit (Eurojust) provides for cooperation and exchange of information on combating serious crimes, in particular organised crime and

[6] Zvit pro vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu ta Yevropeiskym soiuzom u 2018 rotsi, pidhotovlenyi Uriadovym ofisom koordynatsii yevropeiskoi ta yevroatlantychnoi intehratsii, Ofisom Vitse-premier-ministra z pytan yevropeiskoi ta yevroatlantychnoi intehratsii Ukrainy spilno z ekspertamy Proektu Yevropeiskoho Soiuzu «Association4U». Київ, 2018. S. 13. URL: https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/AA_report_UA.pdf (data zvernennia: 05.04.2019).

terrorism, opportunities for Ukrainian representatives to take part in operation and strategic meetings as well as have personal liaison officer under Eurojust.

In prospect, it is essential to guarantee the relevant implementation of agreements with Europol and Eurojust. In particular, to advance efficiency in combating crime related to trafficking in human beings, criminal investigation and prosecution, it is necessary to stipulate close co-operation with the law enforcement agencies of foreign states during the criminal prosecution of human traffickers and the elimination of international traffic channels.

At the same time, to ensure information exchange with Europol using a secure digital data channel, Memorandum between Ukraine and the European Police Office on Secure Communication Links was ratified. The ratified draft law was submitted to the Cabinet of Ministers of Ukraine.

3) It was carried out work on the creation the State Bureau of Investigation (SBI) in order to secure independence and impartial nature of the mechanism of crime investigation and final revocation of investigation functions of prosecution authorities. It is performed activity on personnel, organizational and facilities-resources capacity of the body and its empowerment with legal functions.

4) In the context of cooperation established by the Agreement in combating illegal distribution of narcotic drugs, precursors and psychotropic medications, Ukrainian Monitoring and Medical Center for Drugs and Alcohol developed a draft concept of national monitoring of drug situation in Ukraine and actions plan for its implementation which are based on the standards of the European Monitoring Centre for Drugs and Drug Addiction.

It is also expected to adopt a law on Ukraine's joining Enlarged Partial Agreement on Creation of Cooperation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group) as well as to intensify cooperation with the European Monitoring Centre for Drugs and Drug Addiction, to introduce indicators, which are used by the Center, into monitoring drugs situation in Ukraine.

5) In the sphere of combating and prevention of corruption, Ukraine gets on with the fulfillment of a number of obligations, in particular, concerning a comprehensive process of anti-corruption reforms and

guarantee of the implementation of anti-corruption laws adopted in prior years.

Implementation of Action Plan on the Introduction of Logic and Arithmetic Control System for Declarations and Modernization of the Software and Hardware Complex of the Unified State Register of declarations of the persons authorized to perform functions of the state or local self-government (ITC Registry) (approved by the Order of the Cabinet of Ministers as of November 8, 2017, № 787) is being implemented.

In cooperation with UNDP, it is lasting the activity on the improvement of control mechanism for NACP data put into the Unified State Register of declarations of the persons authorized to perform functions of the state or local self-government by customs declarants, and it is defined system steps which should be taken to ensure the relevant information exchange between the state registries, taking into account the requirements for a complex information security system.

Units of the National Police and the State Service of Finance Monitoring of Ukraine completed investigations on criminal proceedings concerning 9 organised groups and crime organisations involved in legalization (laundering) of illegal income. In the course of pre-trial investigation, UAH 22.4 million was reimbursed, more than UAH 596 million was seized.

Implementation of the norms of the fourth Directive (EU) 2015/849 and Regulation (EU) 2015/847 should contribute to the revision of the draft law on amendments to certain legislative acts of Ukraine in prevention and counteraction to the legalization (laundering) of illegal income, financing of terrorism and spread of weapons of mass destruction. The activity on drafting a bill on amendments to the Law of Ukraine “On Protection of Personal Data” takes place. On May 25, 2018, Regulation (EU) 2016/679 on protection of personal data came into effect. Within the framework of the determination of the approach to the implementation of the mentioned Regulation into the Ukrainian legislation and at the initiative of the Ukrainian Parliament Commissioner for Human Rights, a working group, which elaborated proposals for changes in the national legislation, was created. Now, the process of developing conceptual position on time frame and volume for implementation of the above Regulation is continuing[7].

[7] Zvit pro vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu ta Yevropeiskym soiuzom u 2018 rotsi, pidhotovlenyi Uriadovym ofisom koordynatsii yevropeiskoi ta yevroatlantychnoi intehratsii, Ofisom Vitse-

6) our state actively cooperates with a number of Expert Committees of the Council of Europe in the context of observing human rights and freedoms.

They include the European Committee on Crime Problems (CDPC) among them which is responsible for the control and coordination of lines of activities of the Council of Europe in the area of crime prevention and crime control; Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) the main task of which is to develop lines for intensification of international cooperation in criminal issues and search for options to solve practical problems outlined in statements to the Council of Europe's conventions in the mentioned area[8]. A complex introduction of modern systems of criminal analysis, including Europol methodology – Serious and Organised Crime Threat Assessment (SOCTA), seems expedient.

1.3. Prospects for the implementation of the priority «*safe environment*» under the current conditions

Integration policy of Ukraine in the area of creating "safe environment" includes the following activitiy lines of the MIA and central executive bodies:

− introduction of an optimum system of prompt response to a message on events threatening personal or public security;

− modernization of the local security infrastructure, increase of possibilities of video surveillance, updating of emergency alerting system for population, etc.;

− training of the population for developing relevant skills to ensure personal security, raise awareness of their active role in ensuring public safety;

− professionalism improvement of internal affairs bodies;

− introduction of the principle "Community policing" into the activities of police units in liaison with territorial hromadas.

premier-ministra z pytan yevropeiskoi ta yevroatlantychnoi intehratsii Ukrainy spilno z ekspertamy Proektu Yevropeiskoho Soiuzu «Association4U». Київ, 2018. S. 13. URL: https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/AA_report_UA.pdf (data zvernennia: 05.04.2019).

[8] Zozulia Ye.V. Spivpratsia MVS iz mizhnarodnymy instytutsiiamy ta orhanizatsiiamy v realizatsii prohram reformuvannia pravookhoronnoi systemy Ukrainy ta pryvedennia yii u vidpovidnist do yevropeiskykh standartiv. Nauka. Relihiia. Suspilstvo. 2011. № 3. S. 13.

Ukraine represented by CEB and the MIA guides activities for European and Euro-Atlantic integration in ensuring safe environment in the lines as follows:

1) creation of an effective system aimed at ensuring counteraction to criminal acts against human life, their preventing, eliminating and punishing for such acts, paying reparations to families of victims. In this context, the MIA approved the order on the implementation of the measures for immediate detection and disclosure of torture fact as well as crimes related to cruel and outrageous treatment in the territory of Anti-Terrorist Operation, with the involvement of state authorities and international organizations. It was also elaborated and introduced methodological recommendations for law enforcement officials on the principles of effective investigation in accordance with the practice of the European Court of Human Rights. Since the beginning of 2017, it has been carried out activities towards drafting a bill on amendments to legislative acts in order to establish compensation mechanisms for aggrieved persons in the context of reparation for long-term and ineffective investigation of death cases.

2) compliance with the norms of international humanitarian law and international human rights law on the temporarily occupied territory of Ukraine. Since 2015, constant working meetings with the representatives of the International Committee of the Red Cross and representatives of the Ministry of Defence, Security Service, Prosecutor General's Office of Ukraine have been taking place in order to elaborate a plan for actions to identify, on the territory temporally controlled by illegal armed groups, places of holding prisoners of war and deprivation of liberty of individuals, detection of unidentified bodies of victims, their exhumation, assistance in conducting relevant forensic examination and personal identification of deceased persons. It was also created an interdepartmental group on control and compliance with international humanitarian law and international human rights law on the temporarily occupied territory of Ukraine and in the Anti-Terrorist zone with the involvement of government authorities, law-enforcement agencies, representatives of international organisations (para. 3 of Action Plan to the National Human

Rights Strategy by 2020 approved by the Order of the Cabinet of Ministers of Ukraine as of November 23, 2015, No 1393-p)[9].

3) in order to improve the protection of the rights of the participants of the anti-terrorist operation, the program provides for taking a complex of actions focused on medical, psychological, professional rehabilitation and social adaptation of the ATO participants. Thus, NATO supports Ukraine in implementing the Program of Retraining for Ex-Servicemen who aspire to raise the prospect of their employment in the civil sphere. Servicemen, who wish to be retrained, have the right to choose one free course on language or economic discipline. The aforementioned courses are aimed at facilitating the transition of former military servants from military career to professional civil one, raising the level of competitive capacity of servicemen in the civil sector employment, obtaining professional knowledge, skills and competences due to a particular specialty and training program. 800 persons were retrained during 2018[10].

4) definition and guarantee of fulfillment of the state's positive obligations towards freedom of peaceful assembly, including their security protection. Since the beginning of 2017, negotiation groups for issues of freedom of peaceful assembly were created in the MIA. With the participation of the European Union Advisory Mission (EUAM) Ukraine, three-stage cycle of practical courses for the training of coaches, who are law-enforcement personnel for studies, on international standards and best practices in security of public order during carrying out peaceful assemblies as well as practical courses for law-enforcement personnel on international experience in observing human rights during performing peaceful assemblies (para. 40 of Action Plan to the National Human Rights Strategy by 2020 approved by the Order of the Cabinet of Ministers of Ukraine as of November 23, 2015, No 1393-p)[11].

5) It is implemented the reform of the security and defense sector in the part of introducing gender equality taking into account the fact that the UN Women support the efforts of the Ukrainian government to implement United Nations Security Council Resolution 1325 and Women, Peace and

[9] Pro zatverdzhennia planu dii z realizatsii Natsionalnoi stratehii u sferi prav liudyny na period do 2020 roku: rozporiadzhennia Kabinetu Ministriv Ukrainy vid 23.11.2015 № 1393-r URL: https://zakon.rada.gov.ua/laws/show/1393-2015-%D1%80 (data zvernennia: 05.04.2019).

[10] Analitychni materialy saitu Ukraina-NATO URL: https://ukraine-nato.mfa.gov.ua/ua/ukraine-nato/security-sector-reforms (data zvernennia: 05.04.2019).

[11] Pro zatverdzhennia planu dii z realizatsii Natsionalnoi stratehii u sferi prav liudyny na period do 2020 roku: rozporiadzhennia Kabinetu Ministriv Ukrainy vid 23.11.2015 № 1393-r URL: https://zakon.rada.gov.ua/laws/show/1393-2015-%D1%80 (data zvernennia: 05.04.2019).

Security (WPS) Action Plan. The planning is exercised in close cooperation with the Office of Vice Prime Minister for European and Euro-Atlantic Integration of Ukraine, involving five departments of the security and defense sector: the Ministry of Defense (MD) and the General Staff, the Ministry of Internal Affairs (MIA), the National Police, the State Border Guard Service of Ukraine and the National Guard of Ukraine as part of the Ministry of Internal Affairs. The formation of women working groups, secure peace and safeguard in the Ministry of Defense, the MIA and the State Border Guard Service as well as the development of action plans of the Ministry of Defense, the Ministry of Internal Affairs, the National Police and the State Border Guard Service laid the foundation for further efforts focused on promoting gender equality in this sector. The following recommendations based on the world practices were formed among proposals of further introduction of gender equality into the security and defense sector:

– To integrate the gender concept into the process of defense reform: To develop the strategy of gender equality and draw the focus of all agencies of the security and defence sector towards the reconciliation of their action plans to WPS with the strategy.

– To increase accountability and responsibility at executive level: Authority Body has to make a public statement on its orientation on gender equality and the development of a strategy aimed at prevailing gender issues in all areas of reform. To include gender equality into the duty list of service instructions for all commanders and head of departments. To integrate the principle of prevention of discrimination, sexual harassments and gender-based violence in enhancing officials' personal responsibility for fulfilling own duties.

–To improve capacity and awareness in order to implement the principle of equal rights and opportunities for women and men. To involve experts/advisers on gender issues (AGI) to the Reforms Committee to realise defense reform through SOB. To create a system of full-time AGI in the security and defence sector (for influence on the implementation of Gender Equality Strategy at the strategic, operative and tactical levels) in close cooperation with the specific institutions. To involve advisers on gender issues who have work experience in the sector and are familiar with the units and respected among peers.

– To ensure a regular nature of the performance of gender equality training: To guarantee regularity of including gender equality principles

into all work-related trainings as well as realising practical courses in education institutions and training centers.

– To eliminate obstacles on the way to gender equality: To evaluate to what degree the national/institutional policy, rules, doctrines and standard operational procedures include gender problems and change provisions. To maintain positions till full cancellation of restrictions for women service (for example, in article 43 of the Constitution) guaranteeing the fact they can hold all positions in the security and defence sector, including all military (combatant) posts (according to the targets of NATO Partnership on elimination of legal obstacles interfering equal opportunities). To be in favour of the cancelation of discrimination rules which impede men and women to carry out their duties effectively and guide family responsibilities.

– To improve the conditions for women career in the sector: To develop the policy of staff completing and its keeping by gender with a special support of women in the bodies of the security and defence sector, including provisions allowing personnel to combine their official activities with family and care duties. To introduce gender procedure for recruitment, to upgrade skills and train staff in human resources departments in the context of breaking prejudices and discrimination and to facilitate women participation and leadership in agencies. To elaborate special mentoring / training programs and networks to empower women potential that they will be able to hold senior positions. To promote creation of special women associations where women could share experience and support each other. To create special mechanisms for making of a complaint in the case of discrimination notice, sexual harassment and rape in all agencies of the security and defence sector[12].

Studying the activities of the draft Action Plan for the implementation of the Strategy for the Development of the MIA, namely, Section 9 "Improvement of Organizational Mechanisms for the Implementation of Gender Policy in the Activities of the MIA", it is necessary to draw attention to the need to develop additional measures that would realise provisions for bettering service conditions for women.

6) in order to improve capacity of the National Guard of Ukraine in fulfilling tasks for keeping public security, physical protection of subjects of critical infrastructure, participation in the control and defence of the domestic border of Ukraine as well as support of operations of the Armed

[12] Otsinka gendernoho vplyvu Sektora bezpeky ta oborony v Ukraini bula provedena prohramoiu «OON Zhinky» v Ukraini v ramkakh hlobalnoho proektu struktury «OON Zhinky» «Hlobalni mozhlyvosti dlia zhinok, myru ta bezpeky: Vid rezoliutsii do vidpovidalnosti ta liderstva» v 2017 rotsi. Kyiv, 2017. S. 6.

Forces of Ukraine in crisis situations threatening the national security and in the special period. The cooperation of the National Guard of Ukraine with NATO continues and the application of relevant experience of the law-enforcement agencies of the Alliance member countries and partner countries on issues of guaranteeing the internal security of the state. At the same time, it is continuing the performance of programs which provide the cooperation the National Guard of Ukraine with law-enforcement bodies of the member states of NATO in the context of training units of public security and special forces towards guaranteeing maintenance of public order during mass events.

7) Ukraine and EU reach a political consensus on joining a number of EU initiatives on the improvement of capacity to counter cyber-threats: involvement of the European Union Agency for Network and Information Security (ENISA) in the activities; European Cybersecurity Research and Competence Center; EU trainings on coordination of the mechanisms for mutual reaction of EU and member states to serious incidents and crisis situations in cybersecurity[13]. At the same time, at the end of 2019, it is planned to conclude Memorandum on Cooperation with the EU Cybersecurity Agency and NATO Trust Fund on Cyber Defence and to elaborate projects, in cooperation with NATO experts, which would be financed by NATO Trust Fund on Cyber Defence. At the end of 2020, it is scheduled to conclude Memorandum on Cooperation with Southeast European Law Enforcement Centre (SELEC).

8) cooperation with the EU in border management, migration, shelter and crime prevention continues. Ukraine has implemented a large number of European standards in the sphere of border and migration management and "in general, it continues to execute criteria of visa liberalization". The Second Report of the European Commission refers to this fact under the framework of visa suspension mechanism which was announced in 2018.

The agenda is focused on developing new Strategy for Integrated Border Management and executing the Action Plan for the implementation of the Integrated Border Management Concept. In 2018, Ukraine entered into Romania– the Republic of Moldova Joint Contact Center "Galati"; it was opened updated checkpoint "Palanka" at the boundary of the Republic of Moldova; processing of the new draft Agreement on Integrated Control with Poland adapted to the Schengen Borders Code and EU

[13] Zvit pro vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu ta Yevropeiskym soiuzom u 2018 rotsi, pidhotovlenyi Uriadovym ofisom koordynatsii yevropeiskoi ta yevroatlantychnoi intehratsii, Ofisom Vitse-premier-ministra z pytan yevropeiskoi ta yevroatlantychnoi intehratsii Ukrainy spilno z ekspertamy Proektu Yevropeiskoho Soiuzu «Association4U». Kyiv, 2018. S. 15. URL: https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/AA_report_UA.pdf (data zvernennia: 05.04.2019).

recommendations is near completing. The State Border Guard Service of Ukraine is cooperating with FRONTEX, the European Border and Coast Guard Agency.

Under the framework of implementation of the Strategy for Migration Policy of Ukraine up to 2025, it is carried out a pilot project towards execute, issue, exchange, cancellation, transfer, withdrawal, return to the state, invalidation and destruction of the temporary/permanent residency permit using means of the Unified State Demographic Register and the upgraded Unified Information-Analytical System of Migration Management[14].

CONCLUSIONS

2018 was determinative for the European and Euro-Atlantic integration of Ukraine. The state made a final step towards the constitutional consolidation of strategic targets of the membership in the European Union and North Atlantic Treaty Organization. The Ukrainian parliament reacted on the population demand to be a part of a big family of the European nations. Fixation of the European integration in the Constitution is an important guide which will allow protecting country against political manipulations in the future.

As pointed out above, the Strategy for the Development of the Ministry of Internal Affairs until 2020 approved by the Government of Ukraine in November of 2017 was developed with direct involvement of the experts of the European Union Advisory Mission. The Strategy is based on the results of the MIA reforms in 2014 – 2017 and defines priorities for the further activity. The Strategy 2020 is a logical maintenance of launched changes. The identified directions should contribute to the enhancement of the role of law-enforcement bodies in the society, consolidation of contacts with the public, implementation of new approaches and visions of the MIA operation.

The further reforming should be carried out gradually on the ground of optimal decisions which have to take into account positive experience and best practices of the leading states. At the same time, it is essential to ensure a stable functioning, controllability and performance efficiency of the internal affair bodies.

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[14] Zvit pro vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu ta Yevropeiskym soiuzom u 2018 rotsi, pidhotovlenyi Uriadovym ofisom koordynatsii yevropeiskoi ta yevroatlantychnoi intehratsii, Ofisom Vitse-premier-ministra z pytan yevropeiskoi ta yevroatlantychnoi intehratsii Ukrainy spilno z ekspertamy Proektu Yevropeiskoho Soiuzu «Association4U». Kyiv, 2018. S. 14 URL: https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/AA_report_UA.pdf (data zvernennia: 05.04.2019).

SUMMARY

The paper studies some issues of further development of the system of the MIA of Ukraine in the context of the European and Euro-Atlantic integration. The stress is on the fact that the full development of the Ukrainian state is impossible without the creation if a unified stable and functional system of internal affairs as a part of the national security sector. It is analysed modern challenges forming priorities of the development of the MIA system. The irreversibility of Ukrainian course towards European and Euro-Atlantic integration is indicated. The author considers prospects for the implementation of the priority "Crime counteraction" under modern conditions and focus areas of the activities in guaranteeing safe environment. The research concludes that further MIA reform should be carried out gradually on the ground of optimal decisions which have to take into account positive experience and best practices of the leading states. At the same time, it is essential to ensure a stable functioning, controllability and performance efficiency of the internal affair bodies. It requires the adaptation of departmental legislative acts to EU acquis, improvement of statutory regulation of issues concerning safe environment and crime counteraction.

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CHAPTER 2
LEGAL REGULATION OF THE ACTIVITIES OF THE NATIONAL POLICE OF UKRAINE IN THE AREA OF PREVENTION

Kryvolapchuk V. O.

INTRODUCTION

At the present stage of the development of our society, the role and importance of legal regulation of the activities of the National Police of Ukraine in the context of prevention become particularly topical in building rule-of-law state as the main feature of the model of rule-of-law state is the high-level legal regulation of social relations. The aim of consolidation of the rule of law, enjoyment of civil rights and freedoms in the relations with the bodies of the National Police of Ukraine (hereinafter referred to as "the NP of Ukraine") is to determine the main forms and activity areas of its bodies, structural units and officials which would ensure the daily democratic regime of these relations on the basis of consolidation of the rule of law, firmness of the constitutional rights and freedoms of man and citizen. The effectiveness of preventive police measures of the activities of bodies of the NP of Ukraine depends on the perfection of the statutory regulation of police activity, the clarity of legal instructions, the availability of a developed system of legislation and the relevant by-laws in this area.

The issues concerning the organisation of legal regulation of the activities in the state, society, including in internal affair bodies and police, were covered in research papers of the following leading scholars: O. F. Andriiko, O. M. Bandurka, V.I. Varenko, I.P. Holosnichenko, Ye.V. Dodina, R.A. Kaliuzhnyi, A.P. Kliushnichenko, A.M. Kolodii, A.T. Kuzmuk, V.V. Kopieichykov, M.V. Koval, A.T. Komziuk, M.V. Korniienko, S.L. Lysenkov, O.V. Nehodchenko, S.V. Petkov, P.M. Rabinovych, Yu.I. Rymarenko, O.F. Skakun, O.D. Tykhomyrov, I.M. Shopina, Yu.S. Shemshuchenko, V.K. Shkarupa and others, and the determination of the essence and peculiarities of preventive police measures and police measures of coercion was the focus area of both

domestic and foreign scholars such as O.M. Bandurka, D.M. Bakhrakha, Ye.O. Bezsmertnyi, H.P. Bondarenko, I.O. Halahan, Ye.V. Dodin, A.T. Komziuk, V.K. Kolpakov, L.V. Koval, O.P. Korenev, O.M. Lunov, O.P. Sherhin, O.M. Yakuba and other administrative law scholars. However, administrative and legal aspects of preventive police measures are still undeveloped or controversial.

2.1. Legal regulation of police activities

Scientific legal literature considers *legal regulation* (from the Latin regulare – to direct, organize) as one of the main means of state influence on social relations in order to adjust them according to the interests of man, society and the state. Legal regulation is ensured by virtue of a specially made state mechanism. The main component elements of this mechanism are a) rules of law fixed in the laws and other legal acts that determine the model of alternative and necessary behaviour of a subject of social relations (the rules of law are the basis of the mechanism of legal norms); b) legal facts, that is, specific life circumstances related to the implementation, alteration or termination of legal relations; c) the very legal relations, that is, social relations, indirect norms of law; d) acts of exercise of rights and obligations of subjects of social relations, that is, the actions of the subjects within the limits of the instructions of relevant legal norms; d) legal sanctions against violators of the rules of law[15]. The word *to regulate* is interpreted as to harmonize something, to manage something, to subordinate it to a particular system via relevant rules[16].

The subject of *legal regulation* is a certain form of social relations, which is fixed by a relevant group of legal norms. The subject of *legal regulation* is understood as the way of the influence of legal norms on social relations)[17]. Under the conditions of forming of the foundations of the state of law in Ukraine, the role and significance of legal regulation of social relations become of particular relevance. The feature of high-level legal regulation of social relations is the main feature of the model of the state that is characterised as a rule-of-law state[18].

[15] Shemshuchenko Yu.S. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv: TOV Vydavnytstvo Yurydychna dumka, 2007. S. 692.

[16] Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy / uklad. i holov. red. V.T. Busel. Kyiv; Irpin: VTF Perun, 2002. S. 1020–1021.

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The position of law and *legal regulation* in the organisation of any activity in the state and society, in particular of police, has been frequently mentioned in scientific literature. Thus, O.F. Skakun considers legal regulation as the adjustment of social relations, their legal consolidation, protection and development, which are carried out by virtue of law and a complex of legal means[19]. And A.T. Komziuk notes that legal regulation is a specific influence which is exercised by law as a special statutory institutional regulator. The peculiarity of legal regulation lies in the fact that it, *first*, is a kind of social regulation which has purposeful, organized, productive nature according to its social nature, and, *secondly*, is carried out using a purposeful system of means that really express the very essence of law as a normative institutional body – the regulator[20].

Thus, *legal regulation* is the effect of law on social relations with the aid of certain legal means, first of all, the norms of law[21]. O.M. Bandurka reasonably marks: "Legal regulation guarantees the distribution of supervisory powers between different authorities and services, officials and establishes certain relations between them"[22]. K.F. Skvortsova states: "Legal regulation in any spheres of the state activity should concern not only the definition of rights and obligations of subjects of legal relations but also the elaboration of this system as well as the main issues of the organization of activities of its particular parts"[23]. It is worth mentioning that one of the initial, source elements of legal regulation is the legal rules that constitute the regulatory framework, the core of the mechanism of legal regulation.

Consequently, studying the definitions of legal regulation, we **conclude** and understand the concept of **legal regulation** *as an adjustment of social relations, which is realized by the state with the use of law and a complex of legal means, their legal consolidation, protection and development.*

Features of legal regulation:

1) it is a kind of social regulation;

2) it is implemented by civil society or state;

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[19] Skakun O.F. Teoryia hosudarstva y prava: uchebnyk. Kharkov: Konsum. Un-t vnutr. del. 2000. S.529.

[20] Kozmiuk A.T. Administratyvnyi prymus v pravookhoronnii diialnosti militsii v Ukraini: dys. … d-ra yuryd. nauk: 12.00.07 / Kharkiv, nats. un-t vnutr. sprav. Kharkiv, 2002. S. 59.

[21] Zahalna teoriia derzhavy i prava / za red. V.V. Kopieichykova. Kyiv: Yurinkom, 1997. S. 217.

[22] Bandurka O.M. Teoriia i praktyka upravlinnia orhanamy vnutrishnikh sprav Ukrainy. Kharkiv, 2004. S. 57.

[23] Problemy effektivnosti nadzora / Pod red. K.F. Skvortsova. Moskva: Yurid. lit., 1977. S. 32.

3) it has a) *regulatory-effective nature* which is carried out through a holistic system of legal means that ensure the implementation of rules of law in order to achieve the desired goal (result); b) *organizational nature* – the relations between actors acquire a certain legal form (the norms of law fixe the measure of alternative or proper conduct) via legal regulation; c) *purposeful nature* – it is aimed at satisfying rights, freedoms, legal interests of subjects of law; d) *specific nature* – it is always connected with real (particular) legal relations.

We understand the ***methods of legal regulation*** *as a complex of techniques which help to adjust social relations of the particular type.*

The following ***main methods of legal regulation*** are usually defined in legal literature:

• ***centralized regulation*** *(method of subordination or imperative method)* –the

adjustment is carried out from the top to the bottom based on authoritative imperative principles (most often this method is used in administrative law). Means of centralized regulation are legal acts (laws and subordinate legislation). It involves fixing prohibitions, obligations, penalties (most often this method is used in police activities both in administrative and criminal law);

• ***decentralized regulation*** *(method of coordination or dispositive method)* – participants of legal relations influence the course and process of such regulation by concluding contracts, implementing unilateral lawful legal actions (most often this method is used in civil law). The main means of decentralized regulation is individual acts.

Techniques or ways of regulating relations with the state reveal the specifics of regulation methods and find their special expression in the norms of law. There are ***three classic ways of legal regulation***: *permission, obligation and prohibition*. Consequently, direct ***forms of implementation of the rules of law*** – *use, execution, and compliance,* meet the above three types of legal regulation.

Moreover, *legal regulation of police activities in Ukraine* provides for: *first*, taking into account the fact that legal norms are both a means and a basic tool for the management of social objects and, at the same time, a regulator of police activity, a set of social norms and procedures for their implementation, which ensure the adequate functioning and development of systems in accordance with the conditions of their existence. The state

empowers government bodies and their officials – subjects of the police activities, with certain powers (obligations and specific rights) by means of legal norms within the limits of authority and in the manner provided by the Constitution and laws of Ukraine;

Second, provision of the system of state bodies of legislative, executive and judicial branches of power by public prosecution service and the National Police as one of the executive authorities. At the same time, the current legislative and statutory regulation of police activity in Ukraine, including the bodies of the National Police, plays an important role because the effectiveness of legal regulation often depends on the perfection of its legal basis, clarity of instructions, availability of a developed system of legal norms. Legal norms ensure:

- the definition of the system of police powers for guaranteeing the implementation of preventive police measures by police bodies and units;
- the distribution of the functions between units of a certain police body and their employees for conducting preventive police measures;
- the consolidation of the system of objects and subjects of police activity of the National Police staff.

Third, clarification of the number of social relations which appear, that is, the definition of the *subject of legal regulation* covering all social relations which objectively may be subjected to the statutory-organisational influence due to their nature. Under socio-political conditions, they need such a kind of influence which is conducted with the use of legal norms and other legal means.

Fourthly, conclusion about the role of law in regulating police activity in Ukraine which is carried out by virtue of legal norms which are in the process of legal recognition: 1) the systems of powers of police officers towards the exercise of their rights; 2) forms, types, focus areas and permissible limits of police activity in implementing preventive police measures; 3) the systems of objects and subjects of law-enforcement activity of police officers; 4) the distribution of supervisory functions between units of a certain body and their employees; 5) the main interoperation specifications and coordination of subjects of police activities in exercising preventive police measures; 6) legal protection of the interests of the subjects-participants of police relations; 7) the ***systems of preventive police measures*** in the interests of the rule of law, protection

of human and civil rights and freedoms, interests of society and the state as well as the stability of social relations.

Now, the bodies of the NP of Ukraine act within a certain territory and, accordingly, are accountable and controlled by the executive authorities and, first of all, by the Cabinet of Ministers of Ukraine. Bodies of the NP of Ukraine as a subject of police activities are distinguished by a range of features. *First*, these are bodies which carry out control and supervisory functions; *secondly*, they continuously exercise special state authoritative powers towards non-subordinated entities, which are obliged to comply with the decisions adopted by the bodies of the NP of Ukraine within their competence. In other words, it is referred to supra-departmental nature of powers. It is necessary to understand that this body is in vertical interrelations, in particular, there are internally subordinated relations within the body, as well as control functions related to its activities.

Thus, ***modern police activity in Ukraine is characterized by the features as follows***:

- it is based on the Constitution and laws of Ukraine;
- it is aimed at objects whose structure depends on the particular stage of the historical development of the society and political factors;
- in our society, its content is organically connected with law and legal consciousness and it clearly expresses the inextricable connection of the state and law, their mutual influence;
- it is a state policy;
- it is formed and realized under the influence of a whole complex of

objective and subjective factors (legal awareness of man and citizen and society as a whole, state of crime, economic development of the state, personnel policy (recruitment and appointment), political leadership of the state, its attitude to this issue;

- it is implemented through management, organizational and legal means and by using *preventive police measures* as well as police measures of state coercion, etc.

At the same time, the legal regulation of police activity in Ukraine is included in legislative and legal acts which are different in the form, nature and legal force. According to the form, legal norms elaborated to regulate relations in the sphere of law enforcement police activity in the context of prevention, and legal acts are a way of fixing and their action is the place

of their stay in the socio-legal dimension of the national legal system. In addition, legal acts reveal the essence of legal norms, provisions of law enforcement practice as well as individual instructions, decisions of certain officials.

For example, according to Art. 3 of the Law of Ukraine "On National Police" dated 02.07.2015 № 580-VIII, it is noted that police activity is guided by the Constitution of Ukraine, international agreements of Ukraine obligatory nature of which is confirmed by the Verkhovna Rada of Ukraine, the above Law and other laws of Ukraine, acts of the President of Ukraine and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine, acts of the Cabinet of Ministers of Ukraine and relevant acts of the Ministry of Internal Affairs of Ukraine, other legal acts[24].

Today, in our opinion, *the basic legal acts regulating police activity in Ukraine*, should be divided into **seven interrelated groups**:

1. ***Basic constitutional***: *the Declaration of State Sovereignty of Ukraine dated 16.07.1990 №. 55-XII*[25] was the basis for the new Constitution of Ukraine, the laws of Ukraine and defined the legal concerns of Ukraine in completing international agreements; the Constitution of Ukraine dated 28.06.1996 № 254к / 96-ВР[26] where the first, third and thirteenth chapters contain the norms constituting the constitutional and legal institution of the foundations of the constitutional system of Ukraine. These very norms are the superior legal basis for the activities of law enforcement bodies and, in particular, for bodies empowered by the state with certain police functions in order to ensure the internal security of the state. The legal provisions of the Fundamental Law of Ukraine play a decisive role in police activity since all laws, as well as other legal acts regulating the basic principles of police activity in Ukraine, are adopted under and in accordance with the Constitution of Ukraine;

2. ***International legal acts ratified by Ukraine in accordance with a procedure prescribed by law.*** It is worth mentioning that *first*, the current international legal acts (conventions, declarations, agreements etc.) ratified by Ukraine is a part of the national legislation of our state, which are legal

[24] Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

[25] Deklaratsiia pro derzhavnyi suverenitet Ukrainy: pryiniata Verkhovnoiu Radoiu Ukrainskoi RSR vid 16 chervnia 1990 r. № 55–KhII. Vidomosti Verkhovnoi Rady Ukrainskoi RSR vid 31.07.1990. № 31. St. 429.

[26] Konstytutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

norms regulating police activity. *Second*, law enforcement bodies, including agencies of the NP of Ukraine, cooperate with law enforcement bodies of foreign countries and international organisations using ratified international legal acts. At the same time, law enforcement bodies as subjects of police activity in Ukraine can submit *requests, orders, requirements* to the international organisations and law enforcement agencies with the purpose of ensuring coordination of cooperation concerning issues of their competence. *For example*, it may refer to the extradition of a person who committed a crime or crimes within our territory etc.

3. ***Codified laws of Ukraine and laws of Ukraine***. The concept of ***codification of legislation*** should be understood as a complex of *laws, codes, bylaws* adopted by the executive power of Ukraine that have to consolidate democratic foundations, which are recognized by many countries of the world and are the basis of a particular kind of police activity. In turn, ***laws of Ukraine*** are legal acts of supreme legal force regulating the most important social relations through lay downing rules of general effect which are adopted in a special order (legislative body) or directly by the people. According to the approved world practice, in Ukraine, laws (as well as other legal acts) are adopted on the basis of the Constitution of Ukraine[27] and have to conform to it. *For example*, legal norms of the Law of Ukraine "On National Police" dated July 2, 2015[28], regulated the activity of the National Police of Ukraine in the context of prevention.

4. ***Resolutions of the Verkhovna Rada of Ukraine***. These are legal act which are adopted by the Verkhovna Rada of Ukraine. According to Art. 91 of the Constitution of Ukraine[29], the Parliament of Ukraine adopts laws, resolutions and other acts by the majority of its constitutional composition.

5. ***Decrees of the President of Ukraine.*** These are normative legal acts of the Chief of the Ukrainian state issued towards the most important issues that fall within his competence. Decrees may have both normative and non-normative (law enforcement) nature.

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[27] Konstytutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

[28] Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

[29] Konstytutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

6. ***Decrees and ordinances of the Cabinet of Ministers of Ukraine.*** These are legal acts of the Government of Ukraine. According to Art. 117 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine issues binding resolutions and ordinances within the limits of its competence. The Prime Minister of Ukraine signs the acts of the Cabinet of Ministers of Ukraine and they are subjected to the registration according to the procedure prescribed by law.

7. ***Orders and ordinances of the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine***. These are legal acts of the above central executive bodies (hereinafter referred to as "the CEBs") which are obligatory for the implementation of bodies, units and officials subordinated to the CEBs.

Thus, legal regulation of the NP of Ukraine in the context of prevention is ensured by virtue of a specially made state mechanism the main component of which is current norms of law enshrined in laws and other legal acts, which are regulated by a considerable amount of normative acts differing by many features: *title, legal effect, adoption order, entry into force* etc.

Consequently, the legislation of Ukraine in legal regulation of activity of the of NP of Ukraine in the context of prevention is based on the Fundamental Law of Ukraine and is a complex of laws and bylaws, which legally influence social relations by virtue of legal norms. All legal rules have the same ultimate goal but their content, establishment order and influence on the processes of legal regulation of police activities in the sphere of effect and mechanisms of dissemination in law differ. By the aid of law, the state endows subjects of police activity of the National Police and its employees with particular powers (obligations and specific rights) within the limits of which they implement police activity and are guided by the laws of Ukraine, international agreements of Ukraine the binding nature of which is confirmed by the Verkhovna Rada of Ukraine, acts of the President of Ukraine and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine, resolutions and orders of the Cabinet of Ministers of Ukraine as well as legal acts (orders, ordinances, instructions) issued by the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine, other legal acts.

2.2. Preventive police measure in the activity of the police

Today, the main *goals* of the introduction of preventive police measures at the present stage of the activity of the NP of Ukraine is to reorient its employees to be reliable defenders of human and civil rights and freedoms. The Fundamental Law of Ukraine consolidates that assertion and protection of human and civil rights and freedoms is the main state duty and defines a person, his/her life and health, honor and dignity, inviolability and security as the highest social value[30].

At the same time, protection of human and civil rights and freedoms is the main ***goal*** of police activities as well as the main essential feature of the bodies of the NP of Ukraine which serve for the society observing the rule of law in their activities. The goal involves not only an individual duty to protect the rights but also the availability of restrictions in police activities during implementing tasks and functions. It should be emphasized that the introduction of the institute of police preventive measures in the activity of the NP of Ukraine for the characterization of the tasks of police agencies shows attempts to change the philosophy of this type of activity of the law enforcement agency – to transform its functions regarding the use of preventive police measures by police officers in order to eliminate offenses.

The conceptual foundations of preventive police measures directly derive from the provisions provided by the Declaration on Police[31]. The *aim* of police activity is to promote security and reduce the number of cases of civil disturbances; reduction of crime rate and crime severity; to promote the administration of justice in such a way as to maintain public confidence in the law[32].

One of the decisive steps towards reforming law-enforcement bodies of our state was the adoption of the Law of Ukraine "On National Police" dated July 2, 2015, No. 580-VIII[33] (hereinafter referred to as "the Law on Police") where the novel of legal regulation was the separation of ***section V "police measures"***. The current norms of the above law indicate that the

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[30] Konstytutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

[31] Pro Yevropeiskyi kodeks politseiskoi etyky: Rekomendatsiia Rec (2001) 10 Komitetu Ministriv derzhavam-uchasnytsiam Rady Yevropy (Ukhvalena Komitetom ministriv 19 veresnia 2001 na 765-mu zasidanni zastupnykiv ministriv). URL: http://pravo.org.ua/files/Criminal%20justice/rec1.pdf (data zvernennia 11.03.2019).

[32] Core issues in policing / ed. by Leisman F., Loveday B., Savage S. 2nd ed. Harlow : Longman, 2000. 337 p.

[33] Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

police also use police preventive as well as coercive measures within its competence in order to protect human rights and freedoms, prevent threats to public security and order or terminate their violation.

Now the legal regulation of the activity of the NP of Ukraine in the context of prevention is primarily carried out in accordance with articles 30–40 of the Law on Police[34], which establishes the new institute of preventive police measures the essence and legal enforcement of which needs scientific thorough comprehension because it is characterized as by disadvantages of statutory legal regulation as by the complexity of practical implementation.

However, the legislator determined that a **police measure** is an action or a set of preventive or coercive measures that restrict certain human rights and freedoms and are used by a police officer in accordance with the law to ensure the exercise of police powers[35]. The aim of the police measure is an immediate and effective solution to the issues, situation locally, using measures prescribed by the law, aimed at obtaining prompt result in protecting human and civil rights and freedoms, combating crime, maintaining public safety and order.

Today, the term "prevention" is not fixed in the current legislation of Ukraine but widely used and applied by criminologist scholars and criminal law experts. In English "prevent" means "prevention, admonishment". "Prevention" is a foreign word and has Latin origin from an etymological point of view. Therefore, it is necessary to beat out its meaning from Latin. Thus, *prevention* (Latin praeventio, from praevenire – to anticipate, admonish) means "crimes prevention". The term "prevention" is also used in science as an absolute synonym for the term "crime prevention"[36].

At the same time, the term "prevention" is used in legal science to determine the system of measures aimed at preventing offenses: 1) a set of measures that contribute to eliminating causes of offences commission; 2) the action of administrative, criminal punishment in counteracting offenses.

Whereas, the term *crime prevention* is interpreted as a social activity which involves eliminating causes and conditions of crime. It is a kind of

[34] Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

[35] Tam zhe.

[36] Tykhyi V.P. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv; TOV Vydavnytstvo Yurydychna dumka, 2007. S. 700.

social control and social prevention of anti-social behaviour, including one which is manifested in the commission of offenses.

Crime prevention is an integral part of the function of state of law in ensuring law and order, protection of human and civil rights and freedoms, and its subject is causes and conditions of crime, a separate crime. Crime prevention is also distinguished by the scale (sphere) of its implementation. Based on this feature, there is crime prevention carried out within a country scale, particular region, a separate object, a particular individual[37].

To a greater extent, prevention is a typical for administrative preventive measures in relation to the counteraction to administrative offenses in various spheres that determines the topicality of thorough and comprehensive study of many problematic issues of police activity regarding the use of preventive police measures.

We believe that under the framework of theory of administrative law, *police measures* should be understood as actions of authorized bodies or officials aimed at coercive ensuring of public security and order, prevention and counteraction to offenses. The police measures are quite numerous and diverse. By their very nature, they belong to the measures of direct crime prevention or administrative coercion and, therefore, they are not actions of administrative or any other responsibility. The use of administrative police measures of prevention makes it impossible or delays the commission of an offense.

It is essential to note that preventive measures hold almost the most important place in the activities of police bodies. A.T. Komziuk marks that they provide for, in the cases established by the law, the application of restrictions to citizens and organizations and this is their coercive nature, although, there is a lack of offenses. Professor Y. S. Riabov says that the essence of preventive measures as instructions, which are contained in the disposition of the norms of administrative law, the implementation of which is enforced strictly on the lawful grounds by the authorized state bodies (their representatives) in the case of certain circumstances in order to prevent offenses and secure public safety[38]. We can’t agree absolutely with this statement. Thus, D.M. Bakhrakha denies the availability of preventive measures which he attributes to prohibitions, norms of law as

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[37] Zakaliuk A.P. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv; TOV Vydavnytstvo Yurydychna dumka, 2007. S. 280.

[38] Riabov Yu.S. Administrativno-predupreditelnye mery. Teoreticheskie voprosy. Perm: Kn. yzd-vo, 1974. S. 45.

they allegedly focus not on an individual but on all (or many) citizens, and the general prohibitions do not cause specific legal relations, so there can't be coercion beyond specific legal relations[39].

The Law on Police defines that *the police can use the following preventive measures*: 1) personal identity verification; 2) examination of a person; 3) superficial inspection and examination; 4) vehicle stop; 5) the requirement to leave the place and limit access to the particular territory; 6) restriction of movement of a person, vehicle or actual possession of an object; 7) penetration into residential space or other person's property; 8) verification of compliance with the requirements of the authorization system of internal affairs bodies; 9) use of technical devices and equipment with the functions of photography and filming, video recordings, means of photography and filming, video recording; 10) verification of compliance with the restrictions established by the law with regard to persons who are under administrative supervision and other categories of persons; 11) police custody.

However, a police officer must immediately inform a person about police measure in plain language as well as clarify the right to healthcare, give reason, challenge the actions of the police officer, notify other persons about place of residence immediately. A police officer may skip notification of the rights and their clarification if there are reasonable grounds to believe that a person cannot realise own actions and control them.

The current Regulation on the National Police of Ukraine adopted by the Resolution of the Cabinet of Ministers of Ukraine dated October 28, 2015 № 877[40] doesn't have norms regulating legal support of preventive police measures and police coercive measures which are foundation in the current legal norms "Section V – Police measures" of the Law of Ukraine "On National Police" dated July 2, 2015[41]. In our opinion, it is necessary to amend and supplement it. Thus, paragraph 4 "The National Police in accordance with its tasks" should be extended by sub-paragraphs 12-1 and 12-2 of the Regulation on the National Police approved by the Resolution of the Cabinet of Ministers of Ukraine dated October 28, 2015 № 877

[39] Bakhrakh D.N. Admynystratyvnaia otvetstvennost. Perm, 1966. S. 13.

[40] Pro zatverdzhennia Polozhennia pro Natsionalnu politsiiu: zatv. postanovoiu Kabinetu Ministriv Ukrainy vid 28 zhovtnia 2015 r. № 877. Ofitsiinyi visnyk Ukrainy vid 17.11.2015. № 89. S. 34..

[41] Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

(Official bulletin of Ukraine dated November 17, 2015, № 89, Article 2971), see below in the text.

A policeman is empowered to withdraw weapon or other objects by means of which a person may do harm people around or himself/herself regardless of the fact whether they are forbidden in use. *A policeman is forbidden to search a person who is under police custody.* In addition, a protocol is drawn up on police custody where it shall be indicated as follows: place, date and exact time (hour and minutes) of the police action; grounds of application; description of the confiscated weapon or other objects; petitions, statements or complaints of the person, if any, the presence or lack of visible bodily injuries.

The above provides grounds for the formulation of the concept of "preventive activity" and "preventive police record" which will be presented below. The use of preventive measures by the police is not an end in itself but it complements the implementation of educational, informational and awareness-raising measures and is carried out on the principles of legality, necessity, proportionality, efficiency and observance of human rights and freedoms. Preventive police measures include, in the cases prescribed by law, the application of restrictions on certain rights and freedoms to people and organizations. This fact proves their coercive nature, although there are no offenses. In other words, these measures have a clear preventive orientation and are aimed at protecting the interests of public safety and order and avoiding commission of offenses. The essence of the preventive effect of the mentioned police measures is about, *firstly*, preventing illegal behaviour on the part of persons who are inclined to such behavior, and *secondly*, eliminating the causes contributing to the commission of offenses as well as creating conditions that exclude unlawful conduct.

It is worth mentioning the police are authorized to apply the following *police coercive measures* during the execution of their powers, which are specified by the law on police: 1) physical impact (force); 2) the use of special means; 3) the use of firearms.

Physical effect is the use of any physical force, as well as special methods of combating to stop illegal actions of offenders. *Special measures* such as police coercive measures are a set of devices, equipment and objects which are specially made, constructively designed and technically suitable for protecting people from the damage of various

objects, temporary (avertible) damage to a person (offender, opponent), inhibition or restriction of human freedom (psychological or physical) by influencing him/her or objects surrounding him/her with a clear regulation of grounds and rules for the use of such measures and working animals. *The use of firearms* is the most severe measure of coercion.

A police officer is empowered to keep, carry firearms as well as to apply and use it upon the condition he has had appropriate special training. The Minister of Internal Affairs of Ukraine establishes the procedure for storing and carrying firearms which are at police officer's disposal, the list of firearms and ammunition used in the activities of the police and rules of their affiliation[42].

Compared to the measures of police coercion, which are a reaction to unlawful acts of a person and commission of offenses of both administrative and criminal nature, preventive police measures are used to avert and prevent offenses as well as to ensure the protection of human and civil rights and freedoms, action against crime, maintenance of public security and order. Preventive police measures do not involve the element of person's punishment they are applied to, and, moreover, their use is often not connected with the unlawful behaviour of specific individuals. Preventive police measures, which are not punitive, do not require establishment of offender's guilty as a mandatory condition of use, as well as other compulsory elements of an unlawful act. In order to use preventive police measures, there may be grounds arising due to the availability of conditions that is not a result of the commission of a particular offense by a person but may be directly related to his/her previous antisocial behaviour that indicates the possibility of offences commitment. Consequently, by applying preventive measures, police officers create the necessary conditions for ensuring the rule of law according to which a person, his/her rights and freedoms are recognized as the ultimate values and determine the content and focus of the state's activities. Analysis of definitions of police preventive measures makes it possible to conclude that there is an objective need to distinguish these measures as an independent type of administrative police activity. Now, it is essential to withdraw para. 7 (intrusion into a person's domicile or other property) from p. 1 of

[42] Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

Art. 31 “Preventive police measures” of the law on police[43] because its fundamental legal norms contradict Art. 30 “Everyone shall be guaranteed the inviolability of his domicile” of the Constitution of Ukraine part 1 of which indicates “Intrusion into a person’s domicile or other property, inspection or search shall not be permitted except under a substantiated court decision”[44]. Thus, legal norms of the Fundamental Law are norms of direct effect and, for this reason, it is necessary to exclude p. 7 of Art. 31 of the law on police.

CONCLUSIONS

We understand **legal regulation** as an adjustment of public relations carried out by the state through law and a set of legal means, their legal consolidation, protection and development. We understand *methods of legal regulation* as a set of methods and techniques which harmonise social relations of a relevant kind.

Now, it is necessary to amend and supplement Article 30 and Article 31 of the Law of Ukraine “On National Police” dated July 2, 2015, № 580-VIII (Bulletin of the Verkhovna Rada of Ukraine dated 09.10.2015, № 40–41, Article 379).

1. To supplement part 2 of Article 30 with paragraphs 2 and 3 as follows:

“Preventive police activity is the activity stipulated by the current legislation of Ukraine and aimed at *prevention* which is carried out before the formation of unlawful intentions, *averting* that occurs after the formation of unlawful intent before its implementation and through the commission of the offense, *cessation of offenses* committed after the commencement of the offense with possible application of preventive measures to persons, verification of compliance with the requirements established by law, restrictions, as well as with regard to persons who are in preventive register.

Preventive police register is a complex of measures implemented by the Unified Information System of the Ministry of Internal Affairs of Ukraine (hereinafter referred to as “UIS of the MIA”), which is aimed at maintaining information subsystems of UIS of the MIA in an appropriate

[43] Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.

[44] Konstytutsiia Ukrainy: Zakon vid 28 chervnia 1996 r. № 254k/96-VR. Vidomosti Verkhovnoi Rady Ukrainy vid 23.07.1996. № 30. St. 141.

technical condition regarding people who are in preventive registers and subjected to preventive activity of the National Police bodies".

SUMMARY

The article studies the essence and content of legal regulation of activity of the National Police of Ukraine in the context of prevention, which is provided by means of a specially created state mechanism the main element of which is the rules of law consolidated in the laws and other legal acts determining the model of behaviour of the subject of public relations and police body in the context of prevention.

The author studies the essence of preventive police measures, their practical use and application by the police for the purpose of preventing, averting and cessation of offences, their role in ensuring public security and order in the state, crime prevention. It is presented the author's definition of the subject and concept of legal regulation, preventive police measures and preventive police register, and amendment of the current legislation of Ukraine is proposed.

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11. Pro Natsionalnu politsiiu: Zakon vid 2 lypnia 2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy vid 09.10.2015. № 40–41. St. 379.
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13. Pro Yevropeiskyi kodeks politseiskoi etyky: Rekomendatsiia Rec (2001) 10 Komitetu Ministriv derzhavam-uchasnytsiam Rady Yevropy (Ukhvalena Komitetom ministriv 19 veresnia 2001 na 765-mu zasidanni zastupnykiv ministriv). URL: http://pravo.org.ua/files/Criminal%20justice /rec1.pdf (data zvernennia 11.03.2019).
14. Core issues in policing / ed. by Leisman F., Loveday B., Savage S. – 2nd ed. – Harlow: Longman, 2000. 337 p.
15. Tykhyi V.P. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv; TOV Vydavnytstvo Yurydychna dumka, 2007. 992 s.
16. Zakaliuk A.P. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv; TOV Vydavnytstvo Yurydychna dumka, 2007. 992 s.
17. Riabov Yu.S. Administrativno-predupreditelnye mery. Teoreticheskie voprosy. Perm: Kn. yzd-vo, 1974. 81 s.
18. Bakhrakh D.N. Admynystratyvnaia otvetstvennost. Perm, 1966. 193 s.
19. Pro zatverdzhennia Polozhennia pro Natsionalnu politsiiu: zatv. postanovoiu Kabinetu Ministriv Ukrainy vid 28 zhovtnia 2015 r. № 877. Ofitsiinyi visnyk Ukrainy vid 17.11.2015. № 89. S. 34.

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CHAPTER 3
ANALYTICAL WORK IN THE SYSTEM OF THE MIA OF UKRAINE: NORMATIVE AND LEGAL REGULATION

Verbenskyi M. H.

INTRODUCTION

Analytical work, which is an integral part of the process of implementing the management function, holds a significant position in the activities of the internal affairs bodies. Analytical function is carried out at different levels of management of the MIA system and almost by all units. At the same time, the paper studies the processes taking place in the system of the MIA in the past, the current conditions of external environment, development trends of the system of the MIA as well as the challenges which are the basis for forecasting and planning. Thus, the main goal of analytical work is to study the patterns of all processes and phenomena of social life affecting the activities of internal affairs bodies and to use obtained data and knowledge for ensuring the effectiveness of this activity, and the implementation of analytical function is a way to solve problems of efficiency of agencies and units of the MIA of Ukraine. Special significance and importance of analytical work were marked in the Strategy for the Development of the Ministry of Internal Affairs up to 2020[45](hereinafter the Strategy) approved by the Cabinet of Ministers of Ukraine dated November 15, 2017. One of seven main priorities, that is, "Crime counteraction" provides such a challenge as a low level of the use of analytical tools in crime combating and forecasting relevant threats. To overcome the challenge, there is a need in studying, assessing and improving analytical work in the system of the MIA, reconsidering, updating and systemizing current and adopting new legal acts on this activity.

[45] Pro skhvalennia Stratehii rozvytku orhaniv systemy Ministerstva vnutrishnikh sprav na period do 2020 roku: rozporiadzhennia Kabinetu Ministriv Ukrainy vid 15 lystop. 2017 № 1023-r. Ofitsiinyi visnyk Ukrainy. 2018 r. № 23. St. 808.

3.1. Theoretical and legal bases of analytical work in the system of the Ministry of Internal Affairs of Ukraine

Examining analytical work in the system of the MIA, it is impossible to omit the issue of the conceptual framework. Thus, the word "analysis" in Greek means "a breaking up, interpretation, examination" and is used to define the method of scientific research through logical abstraction. In a general sense, the word "analysis" means a comprehensive consideration, study, examination of something. At the same time, the meaning of "research" emphasizes a deeper, thorough and fundamental study. Thus, analysis is a method of scientific research of objects, phenomena, etc. through interpretation, their partition into the constituent parts in thought[46]. Synthesis, a method of scientific researching by combining, connecting, composing an object, phenomenon in its integrity, unity, is opposite to analysis. Together analysis and synthesis make up a unified process of scientific cognition which management theory and practice call analytical activity[47].

As for the concept "analytical work", it should be mentioned that there is a lack of research concerning the issues of analytical work in the domain of the modern system of the MIA. Scholars' thoughts towards the concept "analytical activity" differ depending on the tasks of one or other internal affairs agency. Thus, E.P. Maslennikov considers that analytical work is a permanent research activity (the function of management process) which covers a wide range of organizational measures and methodological techniques for studying and evaluating crime data, the results of practical activity of the authorities in fulfilling their tasks as well as the conditions under which these tasks are carried out and which provides for purposeful management and performance evaluation of management actions[48]. I.M. Savchenko defines analytical work as a permanent research activity (the function of management process) which covers a wide range of organizational measures and methodological techniques for studying and evaluating of data on external and internal factors, cause-and-effect relations of the functioning of the management system regarding the

[46] Slovnyk inshomovnykh sliv. URL: http://www.jnsm.com.ua/cgi-bin/u/book/sis.pl ?Qry=%C0%ED%E0%EB% B3%E7 (data zvernennia: 18.03. 2019); Slovnyk ukrainskoi movy: v 11 tt. / AN URSR. Instytut movoznavstva. Za red. I.K. Bilodida. Kyiv: Naukova dumka. 1970-1980. T. 1. S. 41.

[47] Teoriia upravlinnia orhanamy vnutrishnikh sprav: Pidruchnyk. K.:Natsionalna akademiia vnutrishnikh sprav Ukrainy, 1999. 702 s. URL: https://studfiles.net/preview/5012883/5 (data zvernennia: 18.03.2019).

[48] Maiboroda L. A. Orhanizatsiino-pravovi zasady stvorennia informatsiino-analitychnykh tsentriv PTO: metodychni rekomendatsii. K.: Prynt, 2009. S.13.

implementation of its certain goal and objectives[49]. Accroding to A.F. Shtanko, “analytical work” is the use of social methods and techniques for studying information, which characterises conditions of the external environment, the state of public order and crime, in order to determine the tasks for improving the efficiency of law enforcement agencies[50]. O.M. Bandurka, defining the concept of analytical work, focuses on criminological information and proposes the following definition: “analytical work is collecting, processing and evaluating criminological information, which is considered as a totality of data necessary for the elaboration of preventive measures, their implementation, control and performance evaluation of activity in progress”[51].

Based on the above, analytical work in the domain of the internal affairs bodies should be considered as research cognitive activity on identifying the causal links, trends and patterns necessary to justify the decisions made and assess the functioning of the system itself. The activity covers data examining and evaluating in the following spheres: ensuring protection of the human rights and freedoms, interests of society and the state, crime prevention, maintenance of public safety and order and the provision of police services; protection of the state border and the sovereign rights of Ukraine in its exclusive (maritime) economic zone; civil defence, protection of population and territories from emergencies and their prevention, emergency recovery, rescue work, firefighting, fire and technological safety, operation of emergency rescue services as well as hydrometeorological activities; migration (immigration and emigration), including counteraction to illegal (unlawful) migration, citizenship, registration of individuals, refugees and other categories of migrants determined by the legislation, as well as the results of practical activities of the internal affairs bodies, the conditions of the external environment where the activity is carried out. The purpose of the analytical work is to ensure the management of the MIA system and to estimate the efficiency of management actions.

In the past decades, analytical activity, its methods and technical means are developing dynamically sensing socio-economic, political and

[49] Maslennikov Z. P. Organizacionno-pravovye osnovy j metodika analiticheskoj raboty v organah vnutrennih del: ucheb. posobie. M., 1979. S. 15.

[50] Shtanko A. F. Voprosy teorii i praktiki rukovodstva gorrajorganami vnutrennih del: prakticheskoe posobie. K.: RIO MVD Ukrainy, 1996. S. 22.

[51] Bandurka A. M. Prestupnost v Ukraine: prichiny i protivodejstvie: monografiya. Harkov: Gos. spec. izd-vo «Osnova», 2003. S. 13.

other changes in public life, complexity and diversity, constant risk, accumulation of new knowledge and information. However, if in the past, the term “analytics” was used independently and today, in the information-oriented society it is increasingly frequent accompanied by the word “information”. Consequently, it is used as a new term “information analytics”[52].The term has been widely covered in the definitions presented in the state standards, research papers, etc. It is common practice to comprehend the term as a set of aimed actions of research and cognitive character carried out by the bodies and units of the MIA by virtue of information technologies, systems of organizational measures and methodical techniques when examining phenomena of interest.

Thus, V.M. Varenko thinks that information analytical activity (IAA) is a specific type of intellectual, mental activity of a person in the process of which it is formed new, secondary insights in the form of analytical essay, report, review, forecast, etc[53] due to a certain algorithm of sequential actions for the search, accumulation, storage, processing, analysis of source information.

O.A. Mandziuk, referring to Yu.P. Surmin, I.V. Klymenko, K.O. Lynov, I.M. Kuznietsov, proposes the following definitions of information analytical activity: scientific-information activity aimed at document analysis and synthesis; a set of actions based on the concepts, methods, tools, regulatory and procedural guidelines for collecting, accumulation, processing and analysis of data to justify and make decisions; a special focus area of information activity related to the identification, processing, preservation and dissemination of information mainly in the sphere of management, political and economic activities; a process of semantic data processing which results in the transformation of disaggregated data into a complete information product – an analytical document[54].

The above definitions show that analytical work closely related to retrieving a wide complex of varied data. The need for use and analysis of

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[52] Kurnosov Yu. V. Analitika, metodologiya, tehnologiya i organizaciya informacionnoj analiticheskoj raboty / Yu. V. Kurnosov, P. Yu. Konotopov. M.: RUSAKI, 2004. 697 s. URL: https://coollib.com/b/223786 (data zvernennya: 25.03.2019).

[53] Varenko V. M. Informatsiino-analitychna diialnist: Navch. posib. / V. M. Varenko. K.: Universytet «Ukraina», 2014. 417 s. URL: http://nbuviap.gov.ua/images/nak_mon_partneriv/IAD.pdf (data zvernennia: 18.03.2019).

[54] Mandziuk O.A. Poniattia ta zmist informatsiino-analitychnoi diialnosti v konteksti borotby z teroryzmom. Hlobalna orhanizatsiia soiuznytskoho liderstva. 2015. URL: http://goal-int.org/ponyattya-ta-zmist-informacijno-analitichnoi-diyalnosti-v-konteksti-borotbi-z-terorizmom/ (data zvernennia: 18.03.2019).

information by law enforcement agencies has steadily increased over the past 50–60 years. Information systems of the internal affairs bodies, which in the past were available in the form of archives with information card files, have been developing in step with information technologies within the framework of special software and skills of professional analysis of crime. Nowadays, under the conditions of the urgent challenges (a critical crime situation; the activity of extremist criminal armed groups on the territory of Ukraine aimed at destabilizing the internal socio-political situation, breaking the functioning of state authorities, local self-government authorities and blocking important industrial and infrastructural facilities; rise in the terrorist threats level; spread of trans-border organized crime; crisis phenomena in the national economy, ineffectiveness of anti-crisis measures causing depletion of the state financial resources, limiting its opportunities to ensure financial support for the implementation of the national policy on the national security, etc.) the significance of information and analytical work in the management activity of the MIA system has become extremely important. Any organizational or tactical problem in management activities in the areas of public safety, protection and control of the state border of Ukraine, civil defense and migration policy is solved by the virtue of a preliminary study of consistent patterns, processes and phenomena of social life, operational environment, practical activities of the authorities in the implementation of a set of tasks, as well as the conditions the tasks are performed in. The necessity for a system approach to this work is also conditioned by the rapid change of socio-economic relations, a deeply-rooted tendency towards the criminalization of society and the urgent needs to create a system of adequate response to these processes on the part of law enforcement bodies.

Analytical work is not down to handle statistical figures, and it also involves a qualitative development of social processes. The European approach offers a variety of forms and methods for analyzing the situation, introduction of qualitative and quantitative information of mathematical methods, which significantly limit the subjective assessments of information and interpretation of findings, into the processing.

3.2. Statutory regulation of analytical work in the system of the Ministry of Internal Affairs

As any activity, analytical work needs statutory regulation. The term "regulatory" means the one which defines the standard of law, the rules of something, meets a criterion and fixed by the criterion[55].The word "regulation" derives from the Latin word "regula" (norm, measure) and means the process of conscious adjusting, the establishment of a certain order, duties. The term "to regulate" is interpreted as the harmonization of something, management of something, its subordination to a certain system[56]. Scientific juridical literature considers legal regulation (from the Latin "regulare" – to guide, to order) as one of the main tools of government influence on the social relations with the aim of their adjusting to the interests of a man, society and the state[57].

Statutory regulation is mainly understood as the effect of law on the social relations through the use of certain legal rules and means. This kind of regulation is provided through a specially created state mechanism. The main components of the mechanism are: a) the legal rules fixed in the laws and other legal acts, which determine the model of possible and necessary behaviour of the subject of public relations (the rules of law are the basis of the mechanism of legal norms); b) the legal facts, that is, specific life circumstances related to the implementation, change or termination of legal relations; c) the actual legal relations, that is, social relations, indirect rules of law; d) the acts of enjoyment of rights and obligations of subjects of social relations, that is, the actions of the subjects of social relations within the instructions of the provisions of the relevant legal norms; e) the legal sanctions applicable to breakers of the rules of law[58].

O.F. Skakun defines statutory legal regulation as the adjustment of social relations, their legal consolidation, protection and development, which are carried out through the rules of law and a complex of legal means[59]. A.T. Komziuk marks that statutory legal regulation is a specific

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[55] *Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy* / Uklad. i holov. red. V.T. Busel. Kyiv, Irpin: VTF "Perun", 2005. 1728 s. URL: http://irbis nbuv.gov.ua/ulib/item/UKR0000989 (дата звернення: 18.03.2019).

[56] Tam zhe.

[57] Shemshuchenko Yu.S. Velykyi entsyklopedychnyi yurydychnyi slovnyk / Za red. akad. NAN Ukrainy Yu.S. Shemshuchenka. Kyiv; TOV Vydavnytstvo Yurydychna dumka, 2007. 992

[58] *Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy* / Uklad. i holov. red. V.T. Busel. Kyiv, Irpin: VTF "Perun ", 2005. 1728 c. URL: http://irbis-nbuv.gov.ua/ulib/item/UKR0000989 (дата звернення: 18.03.2019).

[59] Skakun O.F. Teoriya gosudarstva i prava: uchebnik. Harkov. Konsum: Un-t vnutr. del. 2000. 704 s.

influence which is implemented by law as a special statutory institutional regulator[60].

Thus, studying the above definitions of the statutory legal regulation, we share the opinion of scholars who interpret the concept of legal regulation as the adjustment of social relations carried out by the state through the rules of law and a set of legal means.

In general, the rules of law regulating analytical activity in the MIA system can be gathered into the following groups: legislative and regulatory acts synchronizing all activities of the MIA system; legislative and regulatory acts on analytical activity issues; particular provisions of other legal acts related to information and information-analytical activities.

In general terms, the system of legal support of administration of the MIA of Ukraine is based on the Constitution of Ukraine[61] and is a set of laws and by-laws regulating the operation of the system and its activities. Thus, legal basis of analytical activity in the MIA system is a component of the legal framework of the MIA system activities. It can be defined as a complex of the rules of law which consolidate the necessity and create conditions for the achievement of the goals of analytical activity in the MIA.

As noted above, scholarly papers use the term "analytical activity" together with the term "information activity". The national legislation more often mentions the term in the phrase "information-analytical activity". At the same time, there is a lack of its clear definition as well as for the term "analytical activity" and implementation of analysis as obligatory activity focus. Taking into account the forgoing, we place the emphasis on the need to elaborate the framework of categories and its further consolidation in the legal framework of the national legislation of Ukraine.

Among the legislative acts which regulate the activities of government authorities, including the MIA system, and mention information-analytical or information activities, it is possible to mark the following laws of Ukraine: "On Information" as of October 2, 1992 № 2657-XII[62], "On Personal Data Protection"[63], "On State Statistics"[64], "On Access to Public

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[60] Komziuk A.T. Administratyvnyi prymus v pravookhoronnii diialnosti militsii v Ukraini: dys. … d-ra yuryd. nauk: Kharkiv, 2002. S.59

[61] Konstytutsiia Ukrainy: Zakon Ukrainy vid 28.06.1996 r. № 254k/96-VR//Vidomosti Verkhovnoi Rady Ukrainy. 1996. № 30. St. 141.

[62] Pro informatsiiu: Zakon Ukrainy vid 02.10.1992 r. № 2657-XII // Vidomosti Verkhovnoi Rady Ukrainy. 1992. № 48. St. 650

[63] Pro zakhyst personalnykh danykh: Zakon Ukrainy vid 01.06.2010 r. № 2297-VI // Vidomosti Verkhovnoi Rady Ukrainy. 2010. № 34, st. 481.

Information", "On State Secret", "On Electronic Documents and Electronic Documents Circulation", "On the National Police of Ukraine", "On the National Informatization Program", "On the National Security of Ukraine" and others.

The development of information technologies caused the need to protect personal data. Due the very reasons, the Law of Ukraine "On Personal Data Protection" № 2297-VI was adopted on June 1, 2010. It regulates the relations related to the protection and processing of personal data and aims at protecting the fundamental rights and freedoms of man and citizen, in particular the right to privacy due to the processing of personal data[65].

We note that the issues of regulation of information-analytical work are of interest not only in the context of the activities of domestic law-enforcement bodies. Now, there are a number of international legal acts focused on elaborating general principles and approaches to the organisation of information and analytical activity of the system of law-enforcement bodies.

In Ukraine, except the above documents, information activity more or less is also regulated by other laws of Ukraine, decrees and orders of the President of Ukraine, legal acts of the Cabinet of Ministers of Ukraine. Among the acts of the Cabinet of Ministers of Ukraine in regulating activities of the MIA, the main one is the Regulation on the Ministry of the Cabinet of Ministers of Ukraine (hereinafter the Regulation) approved by the Resolution of the Cabinet of Ministers of Ukraine as of October 28, 2015 № 878. The regulation provides an opportunity to present information and analytical activities as statutory, organizational and staff supported activities of the MIA units, which deal with collecting, processing, systematization, analysis and evaluation of the information required for the implementation of management processes of the MIA bodies[66]. Analytical work is required for the performance of a large number of MIA functions. At the same time, in the context of analytical activity, the Regulation provides this function only in two subparagraphs of paragraph 4 – in subpar. 61 and subpar. 62, in particular, "61) the MIA

[64] Pro derzhavnu statystyku: Zakon Ukrainy vid 17.09.1992 r. № 2614-XII. // Vidomosti Verkhovnoi Rady Ukrainy. 1992. № 43. St. 608.

[65] Pro zakhyst personalnykh danykh: Zakon Ukrainy vid 01.06.2010 r. № 2297-VI // Vidomosti Verkhovnoi Rady Ukrainy. 2010. № 34, st. 481.

[66] Pro zatverdzhennia Polozhennia pro Ministerstvo vnutrishnikh sprav Ukrainy: Postanova Kabinetu Ministriv Ukrainy vid 28 zhovtnia 2015 r. № 878. Ofitsiinyi visnyk Ukrainy. 2015. № 89. St. 2972.

monitors the status of public security and law and order in the state; examines, analyses and generalizes the results and effectiveness of the implementation of state policy in the relevant spheres by central executive authorities, whose activities are guided and coordinated by the Minister; 62) analyses and forecasts the development of socio-political processes in the state affecting the implementation of tasks attributed to the MIA responsibility"[67].

The MIA of Ukraine has the Unified Information System of the MIA due to the adopted Resolution of the Cabinet of Ministers of Ukraine as of November 14, 2018 № 1024 "On Approval of the Regulation on the Unified Information System of the Ministry of Internal Affairs and List of its Priority Information Resources".

The division of functions between the MIA and the National Police, the SMSU, the SMS, the State Border Guard Service sets the MIA the task to expand the service information-analytical maintenance of machinery services and territorial authorities significantly; to undertake the collection, synthesis, analysis and distribution of social information characterizing the political, economic, demographic features of the region and territories included in it, conducting research on the topical issues of ensuring law and order in the region, public opinion about the operation of the services of the MIA of Ukraine to the full extent[68].

From the late 2015 till 2018, the analysis and crime forecasting in the MIA of Ukraine were entrusted to the special subdivision – Department of Analytics and Management (DAM) which actually became a legal successor to the General Staff of the MIA of Ukraine. According to the Regulation on the Department of Analytics and Management of the Ministry of Internal Affairs of Ukraine approved by the Order of the MIA of Ukraine dated 04.12.2015 № 1542, the unit carried out "monitoring, examining, analyzing and forecasting of the development of a security situation, as well as preparing draft management decisions in the spheres where shaping of the state policy was legally referred to the MIA competence" (para. 2)[69].

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[67] Pro zatverdzhennia Polozhennia pro Ministerstvo vnutrishnikh sprav Ukrainy: Postanova Kabinetu Ministriv Ukrainy vid 28 zhovtnia 2015 r. № 878. Ofitsiinyi visnyk Ukrainy. 2015. № 89. St. 2972.

[68] Yesimov S.S. Informatsiino-analitychna diialnist MVS Ukrainy yak obiekt pravovoho rehuliuvannia. Porivnialno-analitychne pravo. 2017. № 1. S. 138-141.

[69] Polozhennia pro Departament analitychnoi roboty ta orhanizatsii upravlinnia Ministerstva vnutrishnikh sprav Ukrainy: zatv. nakazom MVS Ukrainy vid 04.12.2015 r. № 1542. URL: http://consultant.parus.ua/?doc=0AU4O25CE9 (data zvernennia:18.03.2018).

According to the above legal instructions, the DAM of the MIA of Ukraine carried out the accumulation and analysis of information on socio-political, socio-economic, demographic and other processes (factors) affecting the state of a security situation, which is the information basis for crime forecasting, in the state and regions.

The Order of the MIA of Ukraine "On Temporary Procedure for Analytical Support of the MIA" as of December 4, 2015, № 1541, determined a range of measures. In particular, it is provided for the submission of challenging issues related to the implementation of the functions of the Ministry of Internal Affairs towards formation of state policy in statutory spheres and control of its implementation by structural units of the MIA, according to their focus area, for the consideration of DAM; CEB – submission of daily reports on the state of security situation and the main results of the activity of the subordinate bodies over the past day, analytical reports on the state of the crime and security situation in the state, the results of activities of subordinated bodies and their territorial units (analytical report, besides statistical indicators, should contain information about organizational and practical measures that were taken during the reporting period in order to improve the crime and security situation, management decisions made and issued administrative documents, available branch and regional problems, ways of their solutions, analysis of the reasons of the shortcomings in the operation of local units and promising measures to advance efficiency of their performance).

At the moment, according to the Order of the MIA of Ukraine as of 03.12.2018, № 987 "On Amending the Structure of the Ministry of Internal Affairs of Ukraine", DAI is deactivated. Its functions on analytical activity were delegated to the Department of Policy-Making on State Bodies under the Control of the Minister and Monitoring of the MIA of Ukraine. At the same time, there are still no amendments to the Regulation on the Department of Policy-Making on State Bodies under the Control of the Minister and Monitoring approved by the Order of the MIA of Ukraine as of December 23, 2015, № 1622.

As for the forecasts for the development of a security situation, it is important to note that the statutory regulations define the types of such forecasts: current and strategic forecasts and forecasts of the development of a security situation in general and on certain focuses of its development.

Now, functions for the development of forecasts, except the Regulation on the Ministry of Internal Affairs of Ukraine, are not prescribed in any regulatory document.

Other departments and administrations also carry out analytical work in the MIA. There are norms on information-analytical activity in the regulations on the units approved by the orders of the MIA.

It should be pointed out the legal acts, which regulate activity of the CEBs, provide for analysis. Thus, according to the Regulation on Administration of ***the State Border Guard Service of Ukraine*** approved by the Cabinet of Ministers of Ukraine as of October 16, 2014, № 533, Administration of the State Border Guard Service of Ukraine, according to its entrusted tasks, organizes information-analytical activity and risk assessment in the interest of the national border security and sovereignty rights of Ukraine in its exclusive (maritime) zone, that is, performs work related to the information-analytical activity[70].

For today, it was introduced and the main elements of the risk analysis system function, which corresponds both to the concept of the development of the SBGSU and to European standards, in particular: Development Strategy for the State Border Guard Service of Ukraine until 2020 approved by the Decree of the President of Ukraine as of 28.10.15 № 1149; regulations of Schengen Borders Code approved by the Order of the European Parliament and Council of the European Union as of 15.03.06 № 562 and the Common Integrated Risk Analysis Model (CIRAM), recommendations for the introduction into FRONTEX and EU coutries.

In the State Border Guard Service, risk analysis is performed according to the Instruction for Risk Analysis in the State Border Guard Service of Ukraine approved by the Order of the MIA of Ukraine dated 11.12.2017 № 1007 in order to improve risk analysis system with the use of the Common Integrated Risk Analysis Model (CIRAM 2.0) of Member States.

Practice analysis of special agents of the State Border Guard Service who used criminal analysis in their activities shows proceedings of criminal intelligence cases increased by 50% that allows concluding that the use of technologies of crime analysis is an effective method in solving crimes.

[70] Polozhennia pro Administratsiiu Derzhavnoi prykordonnoi sluzhby Ukrainy: zatv. postanovoiu Kabinetu Ministriv Ukrainy vid 16.10.2014 r. № 533. Ofitsiinyi visnyk Ukrainy. 2014. № 85. St. 2390.

The Law of Ukraine “On ***National Police***” is the main one in regulating police activity. According to Article 25, the police perform information-analytical activity exclusively for the exercise of its powers. In the context of information-analytical activity, the police:

1) form the databases (banks) included in the unified information system of the Ministry of Internal Affairs of Ukraine;

2) use databases (banks) of the Ministry of Internal Affairs of Ukraine and other government bodies;

3) carry out information-retrieval and informational-analytical work;

4) exercise information exchange with other government bodies of Ukraine, law enforcement agencies of foreign countries and international organizations.

In addition, Article 86 “Report on Police Activity” of the above Law fixes the duty of the head of the police and the heads of the territorial police authorities to prepare and publish a report on the police activities in the official web-site of police agencies once a year. It should include “an analysis of the crime situation in the country or region, respectively, information on the actions taken by the police and their results, as well as information on the implementation of the priorities set for the police and the territorial police authorities by the relevant police commissions”[71].

The object of the analytical activity in the National Police is the operational situation, which is a set of factors of the external and internal environment determining the basic conditions of the functioning of the MIA system. In its turn, the external environment is all those objectively present-day conditions in which the operation unit performs. The environment consists of two components: socio-economic, political, demographical, territorial and other factors, which influence the crime situation to any extent, forms and methods for its prevention, the very crime and other offences. Analytical activity is specified in details in the Regulation on the National Police approved by the Resolution of the Cabinet of Ministers of Ukraine as of 28.10.2015 № 877. Item 4 (41) of the legal acts stipulates that the National Police, in accordance with its entrusted tasks, “monitors the operation situation in the state, studies, analyses and summarises the results and police performance efficiency, and informs, in the manner and way prescribed by law, government authorities, bodies of local self-government as well ad the public about

[71] Pro Natsionalnu politsiiu: Zakon Ukrainy vid 02.07.2015 r. № 580-VIII. Vidomosti Verkhovnoi Rady Ukrainy. 2015. № 40–41. St. 379.

implementation of state policy in the spheres of the protection of human rights and freedoms, the interests of society and the state, crime prevention, maintanace of public security and order"[72].

The procedure and conditions for conducting information and analytical work in the National Police of Ukraine are defined by a number of legal documents, among which are: Instruction for the Introduction of Unified Record of Notification on Criminal and Other Offences in Police Agencies approved by the Order of the MIA as of November 6, 2015, № 1377; Instruction for the the Operation of Forensic Records of the Expert Service of the MIA of Ukraine approved by the Order of the Ministry of Internal Affairs as of September 10, 2010, №390; Regulation on the Introduction of the Unified Register of Pre-Trial Investigations approved by the Order of Prosecutor General's Office of Ukraine as of April 6, 2016, № 139; Interaction Procedure of the General Prosecutor's Office of Ukraine and the Ministry of Internal Affairs of Ukraine on Information Exchange from the Unified Register of Pre-Trial Investigations and Information Systems of the Internal Affairs Bodies approved by the the Order of Prosecutor General's Office and the Ministry of Internal Affairs as of November 17, 2012, № 115/1046; General Order of SPS, SMS, SFS, MIA, MFA, MSPL, SSU, FIS as of 03.04.2008 №284/287/214/150/64/175/266/75 "On Approval of the Regulation on Integrated Interdepartamental Information-Telecommunication System for Control of Persons, Vehicles and Goods Crossing the State Border"; the Order of the MIA dated 03.08.2017 № 676 "On Approval of the Regulation on Information Telecommunication System "Information Portal of the National Police of Ukraine"; the Order of the MIA of Ukraine as of 16.02.2018 № 111 "On Approval of the Instruction for Response to Notification of Criminal, Administrative Offences and Events and Prompt Informing in the Bodies (Units) of the National Police of Ukraine"; the Order of the MIA of Ukraine dated 20.10.2017 № 870 "On Approval of the Regulation on Automated Data System of Operational Designation of the Unified Information System of the MIA"; Instruction for Adminsitration of Pre-Trial Bodies of the National Police of Ukraine approved by the Order of Ministry of Internal Affairs of Ukraine as of 06.07.2017 № 570 and others.

[72] Polozhennia pro Natsionalnu politsiiu: zatv. postanovoiu Kabinetu Ministriv Ukrainy vid 28.10.2015 № 877. Ofitsiinyi visnyk Ukrainy. 2015. № 89. St. 2971.

The State Migration Service of Ukraine (hereinafter SMS) deals with the following work in the area of information-analytical activity: generalizes the practice of application of the legislation on the issues of its competence; conducts an analysis of the migration situation in Ukraine, the problems of refugees and other categories of migrants, develops current and long-term forecasts on the mentioned issues; collects and analyses information on the availability of refugees and persons in countries of origin who need additional and temporary protection in Ukraine; ensures the creation, improvement, development, maintenance and support of the functioning of the Unified State Demographic Register, the Unified Analytic System for Migration Management, the National System for Biometric Verification and Identification of Ukrainian Citizens, Foreigners and Stateless Persons, which are managed by the SMS, and also carries out activities for protection of information they poses; forms, within the limits of the powers stipulated by law, information resources (databases, data banks) of personal data of individuals (including their biometric data, parameters), other information resources necessary for the implementation of tasks entrusted to the SMS[73].

The State Emergency Service of Ukraine (hereinafter SESU), according to the Regulation on the SESU approved by the Resolution of the Cabinet of Ministers of Ukraine as of December 16, 2015 № 1052, being a central executive body implements the state policy in the arae of civil defense, protection of population and territories from emergency situations and their prevention, emergency response, rescue work, fire fighting, fire and technogenic safety, activities of emergency rescue services, and hydrometeorological activities. Implementing the main tasks, the SESU carries out analytical activity within which it: generalizes the practice of application of the legislation on the issues under its jurisdiction; carries out, along with the central and local executive authorities, local self-government bodies, enterprises, institutions, organizations, forecasting of likelihood of occurrence of emergencies, determines risk indicators; maintains an information base for hydrometeorological data and environment data; issues expert reports on emergency level, keeps their record, etc.[74].

[73] Polozhennia pro derzhavnu mihratsiinu sluzhbu Ukrainy: zatv. postanovoiu Kabinetu Ministriv Ukrainy vid 20.08.2014 r. № 360. Ofitsiinyi visnyk Ukrainy. 2014. № 69. St. 1923.
[74] Tam zhe.

Monthly, the SESU analyzes and prepares emergency information and analytical reports on a website: http://www.dsns.gov.ua/ua/Dovidka-za-misyac/.

Summing up, it should be noted that at the present, the system of the MIA of Ukraine has accumulated solid experience in information and analytical activity. At the same time, despite a large number of laws and subordinate legislation adopted during the last five years aimed at reforming and improving activities of the MIA of Ukraine, analysis of legal regulation of analytical work in the MIA shows that legal framework in this area is not perfect.

It is essential to mark there are still a lot of legally unsolved issues on analytical activity in the MIA. Thus, the Order of the MIA of Ukraine "On Temporary Procedure for Analytical Support of the MIA" as of December 4, 2015, № 1541 is currently the only valid document that regulates activities related to monitoring the state of public security and law and order in the state, analyzing and summarizing the results and effectiveness of the central executive bodies, state policy in relevant areas, analytical criminological research on the most important and topical issues of their activities, forecasts of the development of the crime and security situation in the state, elaboration of general information projects submitted to the ministries, other central executive bodies, project management decisions of the Ministry, preparation of proposals on the priorities of the MIA, CEBs, their territorial bodies and ways to carry out their tasks. However, the above document is, first, has a temporary nature (although it has been in force for almost four years) and, second, some of the norms, which it envisages, are obsolete and need amending. The available experience of analytical activity requires a critical perception, a comparison with European realities in order to prevent the violation of the principle of database formation and analysis, keeping all positive things. In order to solve current problems, it is necessary to create a legal framework that would meet international and, above all, European norms and standards, provide analytical activity, study and implement the positive experience of European states in this area.

Therefore, taking into account the aforementioned , we consider it expedient for the MIA of Ukraine to develop and approve with the order of the Ministry of Internal Affairs of Ukraine an Instruction for Performance of Analytical Activity in the MIA where it will provide the principles,

methodology of scientific search, types of analytical documents, requirements for their content, terms of preparation, approval and promulgation as well as requirements for employees and civil servants who carry out such activities, the procedure for their selection, etc. In addition, it is essential to amend the Regulation on the Department of Policy-Making on State Bodies under the Control of the Minister and Monitoring approved by the Order of the MIA of Ukraine as of December 23, 2015, № 1622, which were delegated the functions of DAM dissolved due to the Order of the MIA of Ukraine as of 03.12.2018 № 987 "On Amending the Structure of the Ministry of Internal Affairs of Ukraine". The changes should relate to the activities of the department in the context of information collecting, its processing, detection and systematization for monitoring the state of public security and law and order in the state, analyzing and summarizing the results of the effectiveness of the implementation of state policy in the relevant areas of the Ministry of Internal Affairs and the central executive bodies.

SUMMARY

The paper is devoted to the study of the issues of analytical work in the system of the MIA of Ukraine and its statutory regulation. The emphasis is laid on the fact that analytical work is an integral part of the process of implementing the management function. It helps to inform management entity about the state of law and order as an object of influence, the external environment and the very system of the Ministry of Internal Affairs as well as determines the strategy and tactics of the activities of the MIA and provides for the preventive nature of administrative influence based on objective and subjective conditions where the system operates. The result of analytical work should be not only the determination of the main challenges and shortcomings but also the identification of particular ways for their eliminating on the ground of available opportunities. Based on the analysis of the legal framework in the sphere of regulating analytical work in the MIA of Ukraine, the author concludes about its imperfection and makes proposals for its improvement.

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CHAPTER 4
INTRODUCTION OF THE POLICY OF EQUAL RIGHTS AND OPPORTUNITIES FOR WOMEN AND MEN IN THE SYSTEM OF THE MINISTRY OF INTERNAL AFFAIRS OF UKRAINE

Protsenko T. O.

INTRODUCTION

Ukraine, developing as a democratic and legal state, primarily focuses on universal human values accepted and implemented by the international community as a prerequisite for society being. The attitude of a society to a man and a woman as equal persons with equal opportunities in all spheres of social and public activity takes a prominent place among such values. Any developed society, which implements universal human values, respects the peculiarities of each sex and seeks to ensure their parity by taking into account psychophysical features of each of them as much as possible. It is the very task which the leading international organizations, including the UN, formulate for their member states.

It is obvious that the implementation of the principle of equality has to cover all life spheres as well as the public one. It is worth noting that today, in Ukraine there are certain preconditions for the implementation of the policy of equal rights and opportunities for women and men (or so-called "gender equality"). At the same time, the mechanism for the implementation of gender equality yet cannot be qualified as perfect. Discrimination against both women and men sexes still exists in Ukrainian society, in particular, in the sphere of exercising the rights to take part in public administration.

Thus, according to the Global Gender Gap Report 2015, Ukraine was ranked 67th among 145 countries by indicators "gender ratio among deputies of the Verkhovna Rada of Ukraine and deputies of local authorities", "the ratio of the average salary of women and men". According to the data of the State Statistics Committee of Ukraine, the average monthly salary of women is 26% less than of men. Women control only 5–10% of economic resources. In a private business, women own

30% of the small, 12.7% of medium-sized and only 13% of big enterprises[75].

It must be agreed that the state gender policy as one of the main regulatory mechanisms of public life is intended to support the values of justice, respect for an individual regardless of his/her gender[76]. For this reason, gender policy in Ukraine, especially under the conditions of the focus on the building of European democratic institutes, gains new, up-to-date nature. It requires the adoption of the value of gender equality both in the society as a whole and in its different institutions, in particular. First of all, it concerns the prevention of gender discrimination, guarantee of equal participation of women and men in making socially important decisions (first of all, through the election to representative bodies and appointment to government positions), guarantee of equal opportunities for women and men in combining professional and family responsibilities, eliminating gender-based violence, etc[77].

In this regard, it is obvious that at the present stage of the formation and implementation of gender policy in Ukraine, the provisions on gender equality should be consolidated not only at the national level but also be detailed in different spheres of public life, including law enforcement one.

Both domestic and foreign scholars devoted a lot of papers concerning the study of individual aspects of the implementation of the policy of equal rights and opportunities of women and men in different time periods. However, there is no comprehensive research related to the introduction of the policy of equal rights and opportunities for women and men directly within the system of the Ministry of Internal Affairs of Ukraine (hereinafter referred to as the MIA). The above information refreshes the need to undertake independent research on this issue and requires follow-up study.

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[76] Hrytsiak N. Formuvannia hendernoi polityky v Ukraini: problemy teorii, metodolohii, praktyky : monohrafiia. Kyiv: NADU, 2004. 384 s.

[77] Bidenko Yu., Kyselova V. Pro hendernu polityku v Ukraini. URL: http://gendercenter.sumdu.edu.ua/index.php/news/314-pro-hendernu-polityku-v-ukraini (дата звернення: 18.03.2019).

4.1. Introduction of the policy of equal rights and opportunities for women and men after the reform of the Ministry of Internal Affairs of Ukraine

Today, it is necessary to consider the activity of the MIA of Ukraine, which is one of the main subjects of the implementation of the mentioned policy, as a perfect example in implementing the policy of the equal rights and opportunities of women and men in government bodies. Thus, a substantive step towards the implementation of the obligations assumed by the state was the establishment of the post of the Adviser on Human Rights and Gender Issues within the Ministry of Internal Affairs in autumn of 2004. The introduction of such a position has become a manifestation of the fact that the MIA can be an active participant in the process of forming and implementing gender policy in Ukraine. In particular, it concerns the issues of the fight against sexual harassment, prevention of domestic violence, child abuse, counter-trafficking in persons. Moreover, according to the Order of the MIA as of 06.02.2008 № 105, it was created a working group under the MIA to introduce gender approaches into the activities of IAA. It elaborated Program for Gender Equality in the Internal Affairs Agencies (hereinafter referred to as IAA) in Ukraine for the period until 2011 aimed at developing and maintaining gender equality in the IAA through conducting a complex of measures to resolve problems of law-enforcement bodies[78].

Modern European integration processes taking place in Ukraine, violate socio-economic and political situation in the country caused fundamental changes in the activities of the majority of state institutions, including law-enforcement agencies. In this context, in the process of implementing Development Strategy of IAA of Ukraine, the MIA was reformed into a multi-functional civilian agency of European type, which ensures guidance and coordination of the activities of the National Police of Ukraine (hereinafter referred to as the NPU), the State Service Emergency Service of Ukraine (hereinafter referred to as the SESU), Administration of the State Border Guard Service of Ukraine (hereinafter the SBGSU), the State Migration Service of Ukraine (hereinafter referred to as the SMSU) and the National Guard of Ukraine (hereinafter referred to as the NGU) implementing the state policy in the relevant spheres by the Cabinet of Ministers (the CMU) by virtue of the Minister of Internal

[78] Bidenko Yu., Kyselova V. Pro hendernu polityku v Ukraini. URL: http://gendercenter.sumdu.edu.ua/index.php/news/314-pro-hendernu-polityku-v-ukraini (data zvernennia: 18.03.2019).

Affairs of Internal Affairs. In this regard, it is obvious that today gender policy also has to be aimed at ensuring equal rights and freedoms of women and men in the activities of the above agencies of the MIA of Ukraine.

It should be emphasized that a substantive step on the way towards the exercise of duties taken by the state was adoption of the relevant legislative and subordinate acts which, at the legislative level, identified issues related to the introduction of the policy of equal rights and opportunities for women and men as one of the priority tasks for the implementation of effective state policy. However, despite the above fact, it should be noted that in the context of positive developments that have taken place after the reform of the MIA, there are still many gaps in the introduction of the policy of equal rights and opportunities for women and men which need further improving. For example, insufficient provision of equal treatment and equal career opportunities for men and women, lack of the principle of equal participation of women and men in the process of decision-making on the reform of the MIA, etc.

In order to solve the challenging issues arising in the daily activities of the bodies of the MIA of Ukraine, including in the sphere of implementation of the policy of equal rights and opportunities for women and men, the Ordinance of the CMU dated 15.11.2017 № 1023-р approved the Strategy for the Development of the Ministry of Internal Affairs until 2020 (hereinafter referred to as the Strategy). One of the main priorities of the development of the bodies was the respect and protection of human rights, and the very implementation of this priority provides for ensuring minimization of violations of human rights and fundamental freedoms in the activities of internal affairs agencies, in particular, by improving the organizational mechanisms for the implementation of gender policy in the activities of these bodies[79]. However, it's worth remarking that despite the approved Strategy, there is still no Action Plan taking into account the fact it had to be elaborated and submitted by the CMU within three months term from the date of adoption according to para. 2 of the Ordinance of the CMU № 1023-р.

The Action Plan of the MIA on the implementation of the National Action Plan on the UN Security Council Resolution 1325 "Women, Peace and Security" until 2020 approved by the Order of the Ministry of Internal

[79] Pro skhvalennia Stratehii rozvytku orhaniv systemy Ministerstva vnutrishnikh sprav Ukrainy na period do 2020 roku: rozporiadzhennia Kabinetu Ministriv Ukrainy vid 15.11.2017, № 1023-r. Uriadovyi kurier. 2018. № 48 (data zvernennia: 18.03.2019).

Affairs of Ukraine as of December 12, 2017, No. 1019 (hereinafter the Action Plan)[80] should be considered as one of the ways for introducing policy of gender rights and opportunities for women and men in the system of the MIA. In order to realise the Plan, it was appointed persons responsible for the implementation of Action Plan and contact persons on gender issues providing support for its effect. The Order of the Ministry of Internal Affairs as of 27.02.2018 No 149 created a working group for the implementation of the Action Plan and approved its members on the basis of the above persons.

The analysis of the Strategy and the Action Plan gives reasons to argue that internal affairs agencies are actively involved in the process of performing the main international obligations of Ukraine related to the effective exercise of the policy of equal rights and opportunities for women and men in Ukraine, and introduction of the principle of gender equality is one of the priorities of both of the MIA and internal affairs agencies.

At the same time, it must be noted that statutory regulation of the mentioned sphere does not fully reflect the real state of affairs. In order to assess the current state of introduction of the policy of equal rights and opportunities for women and men in the system of the MIA of Ukraine, in our opinion, the analysis of statistical information on the distribution and the ratio of men and women of the Ministry of Internal Affairs of Ukraine is an important precondition, in particular: the Central Office of the Ministry of Internal Affairs of Ukraine, institutes and establishments subjected to its administration, namely: the Main Service Center, higher education institutions and research establishments (hereinafter referred to as the MIA) as well as the National Guard of Ukraine and central executive bodies the activities of which are guided and coordinated by the CMU through the Minister of Internal Affairs (hereinafter Internal Affairs Agencies) both for 2016–2017 and 2018 (as of August, 2018). The study of this information allows identifying the dynamics of involvement of women and men in the activities of the above-mentioned bodies as well as assessing the success of the introduction of policy on the equal rights and opportunities for women and men in the system of the MIA of Ukraine during the last three years. In addition, obtained data can serve as an

[80] Pro zakhody z vykonannia rozporiadzhennia Kabinetu Ministriv Ukrainy vid 24 liutoho 2016 roku № 113-r: nakaz Ministerstva vnutrishnikh sprav Ukrainy vid 12.12.2017 № 1019. URL: http://mvs.gov.ua/upload/file/1325_plan_zahod_v_darou_04_1.12.pdf (data zvernennia: 18.03.2019

informational basis for further adjustments in personnel policy in the context of introducing gender parity in the system of the MIA of Ukraine.

Thus, the analysis of statistic data on general characteristic of personnel policy on recruitment and holding of women and men on the positions in the system of the MIA of Ukraine during 2016–2017 shows that the total number of people working in the system of the MIA of Ukraine (not taking into account the State Border Guard Service of Ukraine and the State Emergency Service of Ukraine due to the lack of data) is as follows:

– in 2016, it was more than 150 thousand people; more than 105 thousand or 69.2% were men and more than 47 thousand or ≈30.8%– women;

– in 2017, it was more than 170 thousand people; more than 118 thousand or 71.3 % were men and more than 47 thousand or 28.7 % – women.

The above data demonstrates the following situation: the total number of employees in 2017 increased by 8.68% compared to 2016 but it was not caused by the expansion in the number of women. Based on the data, one can conclude that vacancies were mainly held by men, whose number has increased by 2%. If to examine data in individual bodies, it is worth mentioning that the number of working people:

1) in the Central Office of the MIA, higher education institutions and scientific establishments, service centers and other institutions and establishments belonging to the sphere of its management (hereinafter referred to as the MIA):

– in 2016, it amounted to more than 19 thousand people (≈ 12.62% of the total number of employees of the MIA) where more than 7 thousand or 39.5% were men and more than 11 thousand or 60.5% – women;

– in 2017, the total number of women increased and amounted to more than 12 thousand compared to almost 8 thousand men whose number also increased; women prevailed over the number of men by about a third;

2) in relation to the internal affairs agencies (in particular, the National Guard of Ukraine and central executive bodies the activities of which are guided and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs (except the State Border Guard Service of Ukraine and the State Emergency Service of Ukraine due to the lack of data), in 2016, the total number was more than 133 thousand people

(≈ 87.3% of the total number of employees of the MIA) where more than half – more than 98 thousand were men (≈ 73.4% of the total number of employees in the system of the MIA of Ukraine) and just more than 35 thousand – women (≈ 26.5% of the total number of employees in the internal affairs agencies of Ukraine). In its turn, in 2017, the total number of women (executives and performers) was ≈36 thousand (≈ 24.3%) compared to more than 110 thousand men (≈ 75.6%) and is less than the number of men in three times.

Thus, in comparison with the MIA, there is a lack of the balance in the general amount of staff in the very internal affairs agencies. At the same time, the distribution of women and men by post shows varying nature and traditional hold of executive positions mainly by women, while leadership positions are mostly occupied by men. This tendency is mainly observed in the bodies of the MIA of Ukraine.

The analysis of the obtained statistics does not allow drawing up a coherent vision of the ratio of the number of women and men employees who are on parental leave due to the lack of such data towards the MIA and the NGU. But nevertheless, the analysis of a similar data concerning the MIA bodies gives the reasons to argue that the situation is as follows.

In 2016, more than 98% of 100% of employees, who were on parental leave, of the MIA bodies were women. 3,664 people are the total number of employees of the central executive bodies who had childcare leave in 2017. Almost 100% of them are women (97.70%). In the context of the aforementioned, it is not surprising that in the central office of the National Police of Ukraine none of the male employees took a child-care leave and 100% of the so-called “parental leave people” were women.

Thus, during 2016–2017, the percentage of women was one-third of the total number of employees in the analysed bodies. Moreover, the distribution of posts showed that most of the positions related to the performance of assignments were occupied by women compared to senior positions where the density of men is significantly higher. The largest gap between the number of men and women was observed in security agencies, where a critical lack of female employees was noted.

4.2. The current state of implementation of the policy of equal rights and opportunities for women and men in the system of the Ministry of Internal Affairs of Ukraine

As for 2018, it should be noted that the analysis of statistical data on the general characteristics of the personnel policy regarding the employment and posts maintenance for women and men shows that the number of men in the entire system of the MIA of Ukraine exceeds the number of women almost 4.5 times or by 56% – 78% of men and 22% of women of the total number of employees (taking into account the SBGSU and the SMSU) as of 20.08.2018. Thus, the total number of employees in the MIA of Ukraine is more than 290 thousand people: more than 226 thousand are men (≈ 78% of the total number) and more than 64 thousand are women (≈ 22% of the total number).

Among them the number of employees of:

1) the MIA (the Central Office, the Main Service Center, higher education institutions and scientific establishments of the MIA) is 13 thousand people: more than 6 600 or 50.4% are men and more than 6,500 or 49,6% are women;

2) the number of employees of the internal affairs agencies (in particular, the National Guard of Ukraine and central executive bodies the activities of which are guided and coordinated by the Cabinet of Ministers of Ukraine through the Minister of internal Affairs) is more than 277 thousand people: more than 220 thousand or 79.3% are men and more than 57 thousand or 20.7% are women.

Consequently, it is observed that the MIA keeps gender parity that is approximately the same number of women and men hold posts (50.4% of men and 49.6% of women of the total number of employees in the MIA), while the MIA agencies have a certain misbalance because the amount of men holding posts exceeds 3.8 times or by 58.6% the amount of women (79.3% of men and 20.7% of women of the total number of employees in the MIA agencies).

The results of gender analysis of the implementation of personnel policy in individual bodies and units of the MIA of Ukraine regarding the recruitment and posts maintenance for women and men gives grounds to state that there is a significant difference in the number of female and male employees. For example, the absence and/or low number of women is usually observed in those agencies and units whose functions and tasks the

society mainly associates with men, that is, the implementation of which requires excellent physical training, involves increased responsibility, heavy physical activity, service in "field conditions" (that, in turn, leads to the lack of appropriate sanitary comfort), frequent absence at home, the need to work in a mode of high exertion and self-denial.

First of all, they include the NGU, SBGSU, NPU and SMSU where the number of women amounts from 7.1% to 28% of the total number of these bodies, as well as separate units of the MIA the activities of which are directly related to interaction with these bodies (Office of Cooperation with the NGU, Office of Cooperation with the SBGSU, Office of Cooperation with NPU, division of mobilization work and armor protection organization). In other words, agencies the activities of which are related to the observance of strict hierarchy, subordination and discipline, special organizational structure and interpersonal communication, physical well-being, greater social and professional responsibility, the resolution of operational-service tasks, unlimited work day, and high risk to lose health and/or even life.

In contrast, the absence and/or the low number of men is observed in those bodies and units the functions and tasks of which are mainly related to conditions that require activity without additional physical and psychological stresses with a more calm and normalized work schedule (for example, legal support, documentation of official activity, monitoring of human rights observance, provision of health care, compliance with gender equality, etc.). Thus, such units should be considered, in particular: in the MIA –Department for Gender Equality Issues; Department for the Prevention of Corruption and Lustration; Department of Legal Support; Department of Informatization; Department of Health and Rehabilitation, Department of Official Activity Documentation, Office of Human Rights Monitoring; in the bodies of the MIA – SMSU where the number of women is almost 80% of the total number of employees of the State Migration Service of Ukraine.

If to conduct a gender analysis of the implementation of personnel policy in the system of the MIA of Ukraine in terms of holding senior positions in the system of the MIA of Ukraine, it should be emphasized that the number of employees who hold leadership positions (not below than deputy head of the department) in the system of the MIA of Ukraine is

more than 34 thousand people, among which more than 30 thousand or 87% are men and more than 4 thousand or just 13% are women.

The number of employees who hold senior posts directly in:

1) the MIA, there are 1600 thousand people: more than 1100 thousand are men (≈ 69.7%) and more than 500 are women (≈30.3%);

2) there is a misbalance in gender parity towards holding senior posts by men and women in the internal affairs agencies where the number of employees holding senior positions is more than 32 thousand people, among which more than 28 thousand are men (≈ 87.8%) and more than 4 thousand are women (≈ 12.2%):

– a small number of women holding leadership positions is observed: in the National Guard of Ukraine where only 2.3% of women take senior positions and 97.7% are men; in the State Border Guard Service of Ukraine where only ≈10% of women occupy managerial positions and ≈ 90% – men; in the National Police of Ukraine where only ≈12.5% of women occupy managerial positions and ≈ 87.5% is men; in the State Emergency Service of Ukraine where ≈ 19.1% of women hold senior positions and ≈ 80.9% – men;

– in turn, a large number of women who hold leadership positions is observed only in the State Migration Service of Ukraine where 59% of women hold senior positions, and 40.9% is men.

Thus, as you can see, the number of men in the system of the MIA of Ukraine, who hold managerial positions in the system of the MIA of Ukraine, exceeds the number of women almost in 7.6 times or by 74%. The number of men who are hold managerial positions in the Ministry of Internal Affairs of Ukraine exceeds the number of women almost 3.2 times or by 39.4% and in the agencies of the MIA of Ukraine – exceeds the number of women more than 7 times or by 75.6%.

Gender analysis of the implementation of personnel policy in the system of the MIA of Ukraine regarding the issue of parental leave gives grounds to assert that the number of employees of internal affairs agencies of Ukraine, who were on parental leave, is more than 6200 persons: almost 97% are women and only about 3% are men.

It should be pointed out that carrying out comprehensive analysis of employees in individual bodies and units of the MIA of Ukraine, who are on parental leave, in our opinion, is not expedient because the absolute majority of the total staffing (that is more than 90%) is women.

In this context, one can mark only the National Guard of Ukraine where the number of women who are on parental leave amounts to 100% of the total staffing.

I would also like to draw your attention to the fact that there is a significant difference in the ratio of women and men not only regarding holding of management positions and parental leave, as it was mentioned above, but also regarding the participation in the Anti-Terrorist Operation (ATO), Joint Forces Operation (JFO) and peacekeeping activities. The great majority of employees of the system of the MIA of Ukraine who have taken part or participate in ATO (JFO) (including those who were injured /crippled or who died in the ATO zone (JFO) and obtained the status of "Combat veterans") as well as in peacekeeping activities are men.

Thus, the number of female employees in the system of the MIA of Ukraine who have taken part or participate in ATO (JFO) (including those who were injured /crippled or who died in the ATO zone (JFO) and obtained the status of "Combat veterans") as well as in peacekeeping activities is from 0,04 % to 2,8 %. The above conclusion is based on the fact that the number of employees in the system of MIA of Ukraine, as of 20.08.2018, who:

1) has participated or is participating in maintaining ATO (JFO) is 47 thousand people, 46 thousand of whom is men (≈ 97.4 %) and only more than 1100 are women (≈ 2.5%), in particular, the number of such employees: a) in the MIA is 555 people, 474 of whom are men (≈ 81%) and 81 – women (≈14.6%); b) in the agencies of the MIA system (not taking into account the data of the State Guarder Board of Ukraine due to the lack of information) it accounts to 46 thousand people, more than 45 thousand of whom are men (≈ 97.6%) and over 1100 are women (≈2.3%);

2) was injured /crippled in the ATO zone is 861 people, 852 of whom are men (≈ 98.9%) and only 9 women (≈ 1.04%), in particular, the number of such employees: a) 11 persons in the MIA, no women at all, and all 11 persons (100%) are only men; b) in the system of the MIA agencies (not taking into account the data of the State Guarder Board of Ukraine due to the lack of information), it is 850 people, 841 of whom are men (≈ 98.9%) and more than 9 are women (≈ 1.09%);

3) died in the ATO zone (JFO): 236 people, 235 of whom are women (≈ 99.6%) and only one woman (≈ 0.4%);

4) obtained the status of “Combat veterans”: more than 35 thousand people, more than 34 thousand of whom are men (≈ 97.2%) and over 900 people are women (≈ 2.8%), in particular, the number of such workers: a) in the MIA is 545 people, 483 of whom are men (≈ 88,6%) and 62 – women (≈ 11,4%); b) in the agencies of the MIA of Ukraine (not taking into account the data of the State Guarder Board of Ukraine due to the lack of information) there are more than 34 thousand people, 33 thousand of whom are men (≈ 97.4%) and more than 900 are women (≈ 2.6%);

5) involved in peacekeeping activities – 153 people, 148 of whom are men (≈ 96.7%) and 4 women (≈ 2.6%).

Therefore, the analysis provides grounds for the general conclusion that the current state of introduction of the policy of equal rights and opportunities for women and men in the system of the MIA of Ukraine does not fully comply with the relevant requirements and international standards. Despite the positive changes which have taken place after the MIA reform, there are many gaps in the sphere under consideration, including: a lack of equality between women and men among employees of the MIA system, insufficient security of equal treatment and equal career opportunities for male and female employees and others.

That sort of conclusion is based on the latest statistical data:

1. The number of men in the system of the MIA of Ukraine exceeds the number of women almost 4.5 times or by 56% (78% of men and 22% of women of the total number of employees).

2. In the internal affairs agencies of Ukraine, there is a misbalance in the gender parity towards the holding of posts by women and men because men hold the posts 3.8 times or by 58.6% more than females (79.3% of men and 20.7 % of women of the total number of employees in the system of the MIA of Ukraine). At the same time, the MIA observes gender parity, that is, there is approximately equal number of women and men holding posts (50.4% of men and 49.6% of women of the total number of employees of the MIA).

3. There is a meaningful and significant difference in the number of female and male employees in separate units of the MIA and internal affairs agencies. For example, the absence and / or a low number of women is usually observed in those agencies and units the functions and tasks of which the society mainly associates with men, that is, the implementation of which requires excellent physical well-being, involves

increased responsibility, heavy physical activity, service in "field conditions" (that, in turn, leads to the lack of appropriate sanitary comfort), frequent absence at home, the need to work in a mode of high exertion and self-denial.

They should include agencies the activities of which are related to the observance of strict hierarchy, subordination and discipline, special organizational structure and interpersonal communication, excellent physical well-being, greater social and professional responsibility, the resolution of operational-service tasks, unlimited work day, and a high risk to lose one's health and/or even life.

In contrast, the absence and/or a low number of men is observed in those bodies and units the functions and tasks of which are mainly related to the conditions that require activity without additional physical and psychological stresses with a more calm and normalized work schedule (for example, legal support, documentation of official activity, monitoring of human rights observance, provision of health care, compliance with gender equality, etc.).

4. There is a significant difference in the correlation of women and men not only in the context of holding senior posts in the system of the MIA of Ukraine and parental leave but regarding participation in ATO (JFO) and peacekeeping activity, in particular:

1) now, men hold the majority of senior positions in the system of the MIA of Ukraine. Thus, the number of men in the system of the MIA of Ukraine, who hold senior positions (not below than a deputy head of the department), exceeds almost 7.6 times or by 74% the number of women (87% of men and 13% of women of the total number of senior employees). The number of men who hold senior positions in the Ministry of Internal Affairs of Ukraine is almost 3.2 times or by 39.4% higher than the number of women (69.7% of men and 30.3% of women of the total number of senior employees) and in the bodies of the MIA of Ukraine – almost 7.1 times or by 75.6% higher than the number of women (87.8% of men and 12.2% of women of the total number of senior employees);

2) parental leave among male staff of the system of the MIA of Ukraine is unpopular, and the number of women in the system of the MIA of Ukraine who are on parental leave exceeds the number of men almost 33.3 times or by 94% (97% of women and 3% of men are on parental leave), and in the National Guard of Ukraine none of male employees took

a parental leave and 100% of the so-called "parental leave people" were women;

3) the overwhelming majority of employees of the system of the MIA of Ukraine who has participated or are participating in ATO (JFO) (including those who were injured /crippled or who died in the ATO zone (JFO) and obtained the status of "Combat veterans") as well as in peacekeeping activities is men. Thus, the number of female employees in the system of the MIA of Ukraine who has participated or is participating in ATO (JFO) (including those who were injured /crippled or who died in the ATO zone (JFO) and obtained the status of "Combat veterans") as well as in peacekeeping activities is from 0,04 % to 2,8 %.

Thus, the findings confirm the availability of significant differences in the number of female and male employees in the relevant bodies and units of the MIA. The phenomena can be explained by the lack of interest in the majority of women to hold the positions requiring excellent physical well-being, involving increased responsibility, heavy physical activity, over time work, etc. giving preference to non-stress areas of work, with standard working hours, without additional workload trying to balance their work life with the family. It is also caused by the fact that now in the system of the MIA there are relevant prejudices that first, women are not ready for such type of work and are not interested in it and, secondly, such positions should be mainly held by the employees who have a certain list of qualities that is usually peculiar to male not female character according to the vision of an ordinary person.

We believe that it was caused by the narrow understanding of gender issues as well as by the availability of certain gender stereotypes which are deeply rooted in the society according to which: first, work in law enforcement agencies, holding of senior positions in the agencies as well as participation in ATO (JFO) and peacekeeping activity is understood as exclusively man not woman staff; second, it is considered that solely a woman should be engaged in upbringing of children and therefore, it is she who should be on parental leave. One for the reasons is also the existence of certain stereotypes about the fact that one of the reasoning may be the marginalization of father role laid down since the Soviet era when motherhood was considered the greatest duty to the state. It is impossible to disagree with the fact that "... in the security sector, there is a widespread metaphor for women career as follows "three maternity leaves

–you are colonel", or "3 maternity leaves – retiring pension". At the same time, men who are on service, taking parental leave, are often publicly or implicitly victimized by colleagues and executive staff, subject to certain mockeries and ridicules because they are not considered to be full-time employees[81]. Many experts believe that the above stereotypes are available due to the corresponding public perception of the social role of a man who is a priori considered to be a courageous "breadwinner" of the family, and one who is on parental leave is a "henpecked husband" who had to stay at home due to his inability to support his family.

CONCLUSIONS

In our opinion, the high priority measures aimed at improving the introduction the policy of equal rights and opportunities for women and men in the system of the MIA of Ukraine are as follows: 1) to harmonize the departmental legal acts of the MIA with the National Action Plan "Women, Peace, Security" (as amended by the Resolution of the CMU № 637-r dated 05.09.2018), the National Action Plan for the Elimination of Discrimination against Women and the State Social Program on Providing Equal Rights and Opportunities for Women and Men, in particular, by approving a new Action Plan of the MIA on Gender Policy up to 2021 instead of the MIA Action Plan for the Implementation of the National Plan "Women, Peace, Security" which should be found to become null and void due to the fact that its provisions do not meet the above national documents; 2) to approve the Action Plan for the Implementation of the Strategy for the Ministry of Internal Affairs of Ukraine until 2020 which should determine the relevant organizational mechanisms for the implementation of the policy under consideration in details; 3) to ensure equal treatment and equal career opportunities for men and women in the Ministry of Internal Affairs system, including by introducing relevant provisions into the procedure of personnel selection; 4) to realise particular practices, trainings, seminars, roundtables, forums, etc. aimed at overcoming the established gender beliefs and forming modern liberal views on the role and place of women and men both in public life in general and in the activities of the agencies of the Ministry of Internal Affairs in particular; 5) to carry out permanent (annual) gender analysis of the implementation of personnel policy and maintenance of posts for men

[81] Zhinky. Myr. Bezpeka: Informatsiino-navchalnyi posibnyk z hendernykh aspektiv konfliktiv dlia fakhivtsiv sektoru bezpeky / Kolektyv avtorok. – Kyiv, 2017. – 264 s.

and women; 6) to form staff commissions consisting of equal number of women and men in order to reduce the partiality in making personnel decisions; 7) to conduct further scientific, in particular, empirical research on the implementation of the principle of equal involvement of women and men in the system of the MIA of Ukraine as well as the fight against gender discrimination and sexual harassment; 8) to develop a gender culture of employees of the MIA of Ukraine and eliminate of gender-discrimination stereotypes; 9) to extend possibilities for combining family responsibilities and professional activities of both women and men, etc.

SUMMARY

The author studies the topical issues related to the introduction of the policy of equal rights and opportunities for women and men in the system of the MIA of Ukraine. The emphasis is placed on the fact that the mechanism for the implementation of equal rights and opportunities for women and men in Ukraine is not perfect as confirmed by the availability of discrimination against both female and male individuals. It is stressed that at the present stage of the formation and implementation of gender policy in Ukraine, the provisions on gender equality should be consolidated not only at the national level but also be specified in different spheres of public life, including the law enforcement one. The paper highlights that despite positive developments, which have taken place after the MIA reform, there are still many gaps concerning the introduction of the policy of equal rights and opportunities for women and men which need further improving. It is stated that in order to assess the current state of implementation of the policy of equal rights and opportunities for women and men in the MIA of Ukraine, the analysis of statistical data on the distribution and correlation of male and female employees in the MIA system is an important precondition. On the ground of the analysis of the statistical data, it is concluded that there are significant differences in the number of female and male employees in the relevant bodies and units of the MIA, and the main reasons causing it are determined. The paper presents proposals for improving the introduction of the policy of equal rights and opportunities for women and men in the MIA system of Ukraine.

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CHAPTER 5
INTERNATIONAL AND NATIONAL SECURITY THROUGH THE PRISM OF THE CHALLENGES AND THREATS OF GLOBALIZATION: THE PROBLEM OF RECONCEPTUALIZATION STABILITY

Alieksieienko I. V.

INTRODUCTION

In the twenty-first century, humanity took the lead in addressing the challenges posed by globalization. Today, the problem of security in a globalized world is becoming global in nature. Global policy emphasizes global security issues in close connection with the problems of personal security, on the analysis of security at the micro level as a state of protection of vital personal interests.

The phenomenon of international terrorism and its variant – global terror – became a symbolic center of global challenges of our time as a set of the most acute global problems facing the world civilization in the XXI century.

Terrorism is a challenge to the sovereignty of nation-states in their monopoly on violence. It is transnational in nature and levels the ability of sovereign States to control cross-border linkages. Terrorism has become a method of imposing its will through the illegal (unauthorized by systemic norms) use of violence, erosion of the monopoly of the modern state on violence, a key component of sovereignty[1].

Taking into account these tendencies, in the international security studios in the late XX – early XXI centuries there was a rethinking of the concept of security, which led to a noticeable shift of attention from the state as the main object to the individual and his needs, the expansion of the list of threats, their inclusion in the general context of globalization, which was reflected in the works of J. Barnett, B. Buzan, K. But, A. Veiver, R. Kaplan, J. Tikner, R. B. J. Uoker and others.

The most researched domestic science, from the point of view of internal national security, is its information component, in particular the methods of its provision (V. Konakh, Y. Maksimenko), the development of

[1] Terrorism and Organized Crime: Monograph / S. A. Solodovnikov and others. 2nd ed., Pererab. and add. M.: "UNITY – DANA". Law and Right. 2012. 247 p. (In Russian).

international cooperation in this field (Y. Romanchuk), the role in the context of European integration (D. Dubov) and the fight against terrorism (I. Alekseenko, D. Kislov), the mechanisms of implementation in a particular region (V. Kozubsky) or in the media space (G. Saschuk).

The military aspects of national security have also been analyzed in detail, including from the point of view of the states military might (V. Smolyanyuk), integration with NATO (V. Panasyuk, I. Fanin), threats of intensifying information wars (V. Petrov), etc.

At the same time, these studies are based on the concept of national security, in which the state plays a leading role, so the focus on the priority of human security in the context of reconceptualization, which took place in the late twentieth century, has not yet been fully reflected in the works of domestic researchers. This is what made this scientific research relevant.

5.1. «Human Security»: Essential Characteristics, Support Strategies

The period of globalization is marked by the emergence of a fundamentally new concept of security – the concept of human security. Among the actors of world and national politics, leaders of non-governmental organizations, academic circles are forming an understanding of changes that have occurred in the very content of security in today's world, in which national security and territorial integrity are no longer a guarantee of real human security. His traditional view of security, focusing on the use of military force to ensure the territorial integrity of sovereign states, and his approach to foreign and global politics, is gradually giving way to a new, broader approach to security, where it is viewed not through the prism of the interests of individual nations, but from a global perspective.

Thus, as early as the early 1990s, the transition from a state centrist concept of national security to a mega-centric concept of common security and a micro-orientated concept of human security as the basis of modern world politics emerged. As early as the mid-1990s, the approach to security was reflected in UN policy documents, and the concept of human security itself focused on the security of human life and personal dignity.

Accordingly, the concept of human security defines its four essential characteristics:

– Its universal character;
– Interdependence of all its components;
– Preventive nature of measures to ensure it;
– Focusing on the interests of people, the individual.

It should be noted that Canada, Norway and Japan became world leaders, the first to incorporate the concept of human security as the basis for the official foreign policy of their countries in the world arena.

There are different interpretations of the concept of human security and its components. The UN has adopted a model of human security that includes seven dimensions of human security (economic, political, social, personal, environmental, nutrition, health, and personal security).

By the end of the 1990s, alternative classifications of components of the human security concept appeared. Thus, J. Neff names five parameters characterizing possible threats to human security from the main structural elements of the global world (ecology and environment, economy, society, politics, culture). J. McLean justifies multi-level conceptual models of human security. It is a concept of individual security that takes into account the characteristics of the immediate environment of the individual, his social connections and the wider environment (external environment). Characteristically, a wide range of indicators specifies the main parameters that include such aspects as the individual's personal safety and protection from violence and harm, protection from criminal acts and terrorism in relation to the individual[2].

For example, Harvard University Professor H. King puts forward a concept of human security that includes four main strategies for ensuring human security in the global world:

– A risk assessment strategy;
– A strategy for preventive action;
– Protection strategy;
– Compensation strategy.

In the formula: Risk assessment strategy – Preventive action strategy – Protection strategy – Compensation strategy – Risk assessment is key, which involves a process of improving knowledge and on this basis forecasting potential risks and threats to human welfare. Risk assessment is seen as a central component of global human security policy. The task of developing a risk assessment strategy is linked to the need to create an appropriate database and develop risk research methods, including psychological, socio-psychological and other methods to provide adequate forecasts of possible security threats. The Privileged Action Strategy includes the development and implementation of risk reduction tools. The protection strategy includes actions to minimize potential or actual

[2] Nef J. Human Security and Mutual Vulnerability: The Global Political Economy of Development and Underdevelopment. 2nd ed. Ottawa, 1999. 245 p. (In English).

damage. The compensation strategy includes some efforts to provide financial support to those below the poverty line through insurance, humanitarian assistance and other forms of assistance[3].

Yan Scholt, defining globalization as a process of territorialization, when «social space is no longer determined by the space of territorial scale of territory and territorial boundaries»[4], also put forward, so far, an imperfect concept of human security, which provides for the creation of global governance structures, redeployment (redistribution) of benefits between the North and the South, a triple alliance of business, the national state and civil society in the implementation of strategies to ensure human security.

The developed network models of security management are based on the assumption that the management of terrorism should be based on the concept of human security in general, which takes into account both behavioral and institutional aspects of the strategy. Michael Dartnella believes that global governance of terrorism is possible through the creation of international networks, legitimately limiting the spread of terrorism at all levels (international, national, social, regional, personal). A nation-state is only one element of a network whose components and elements interact, complement and balance each other, functioning on a legitimate basis, as represented by a system of multilateral agreements and international conventions, and including also subsystems of State law, legal information exchange between States, inter-State cooperation and coordination of relevant actions regarding the threat of terrorism at any level. The institutional component of the network model for countering terrorism is a complex set of agreements aimed at countering specific types of violent behavior; protecting personal security; and controlling the use of life-threatening materials, such as biological and chemical weapons, nuclear materials, explosive materials and toxic weapons.

The distinctive feature of the network model of the concept of human security is its integral character, the combination of the behavioral approach in one conceptual solution (terrorism is considered to be a differentiated form of behavior, by its nature is close to international crime, moreover, closely related to it) and the institutional approach (the system of conventions on counteraction to terrorism is formed as an effective basis for creation of an interethnic network of global restrictions of terrorism in the long run). One cannot but agree that the idea of network connections,

[3] Definitions of Community Resilience: An Analysis: A CARRI Report. URL: http://www.resilientus.org/reports.html (In English).

[4] Scholte J. A. Globalization. A critical Introduction. London: Palgrave. 2000. 216 p. (In English).

which lies at the heart of this model, is more consistent with the network character of the modern global community than the traditional concept of the world order, and the behavioral approach in the conceptualization of the global system of counterterrorism contributes to the development of universal norms and rules of management of politically motivated violence and various forms of behavior, called terrorism today.

The achievement of international consensus and the development of international cooperation in understanding the nature of terrorism is complicated by the difference in values and, consequently, by the differences in assessments and views of various actors in the international community regarding the motives of terrorist groups and organizations, especially if these assessments do not coincide with the Western system of norms and values. In this context, the microbihevrial conceptual line with its focus on human psychology and sociology, its socio-political activity factors, as well as the political-cultural conceptual perspective provide real opportunities to define common, universal principles of the human security system in the global world.

Discussion of the problem of international terrorism within the framework of political-cultural line assumes, as a rule, comprehension of civilization sources of terrorism. Common for the majority of researchers was the appeal to S. Huntington's views on the fundamental sources of conflict in today's changing world[5], which he connects not so much with ideological differences and economic differences as with civilizational differences. Civilization is understood here as a cultural commonality, a common level of cultural identity. Civilization is conceptualized by S. Huntington as the unity of common objective elements (such as language, history, religion, institutions), as well as subjective elements (self-identification of people, carried out in accordance with the values of a certain culture). In S. Huntington's understanding, identity appears more where there is a psychological basis and then a political one, and is related to a certain general level of identification to which the personality correlates. A person's review of his or her identity takes place in the event of changes in the boundaries, structure and character of civilization. That is why, according to S. Huntington, Western civilization faces a conflict situation if it is opposed by civilization, which protects its historical cultural values, beliefs and institutions. Monolithic civilizational blocks can be destroyed, and this entails significant changes in the nature of

[5] Huntington C. The collision of civilizations and the reorganization of the world order. Pro et Contra. 1997. № 2. Pp. 131–158. (In Russian).

individual self-identification. In these circumstances, States (although they remain the most influential actors in world politics) are giving way to civilizations as a more general fundamental entity, which are becoming the real drivers of the conflict of civilizations in the global world. Although the work of C. Huntington's work does not contain an analysis of terrorism as a form of conflict of civilizations, but the principles of civilizational conflict analysis are widely used to analyze terrorist forms of conflict. In this regard, M. Taylor and J. Horgan note that within the broader context established by S. Huntington, there is every reason to believe that terrorism will continue to develop and flourish, that is, to fulfill its role in the development of new forms of conflict. It will remain an attractive strategy for any small, disenfranchised group seeking influence that exceeds their real entry points[6].

5.2. Modern technologies of diagnostics and terrorism prevention. Profiling method. Role of the Ministry of Internal Affairs in the preparation of professional profilers

The synthesis of the objective and subjective aspect of terrorism is achievable on the basis of modern micro-orientated research strategies, the experience of which has been accumulated in psychology, sociology, and micro-politics, and conflict ology. The results of such research can be taken into account when developing preventive strategies to prevent and control terrorism. For example, the political-psychological approach justifies the existence of political-psychological factors that deter terrorist behavior at the micro-level. As early as the 1980s, Knutson recalled the «implicit (hidden) rules of the game» that constrain the actions of a terrorist, in particular when it comes to the use of violence. In this case, the terrorist faces a number of dilemmas. One dilemma is the choice of the level of terror (low, medium, high). The minimum level of the terrorist act guarantees the terrorist a lack of response, first and foremost from the public. The maximum level of terror threatens to lose the possibility of pressure on the authorities to implement their demands, so that the response to terror will inevitably be associated with the use of violence[7].

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[6] Dartnell M. A Legal Inter-Network for Terrorism: Issues of Globalization, Fragmentation and Legitimacy. The Future of Terrorism. M. Taylor and J. Horgan. London. The Macmillan Press. 2001. 298 p. (In English).

[7] Knutson J. The Terrorist' Dilemmas: Some Implicit Rules of the Game. Terrorism: An International Journal. 1980. № 4. P. 192–296. (In English).

Terrorist violence continues to be constrained by restrictions, although its gradual erosion is becoming increasingly evident. Jenkins's assertion[8] of the possible erosion of traditional, largely psychological, restrictions on terrorism makes it legitimate to determine the nature of cases in which these restrictions cease to be in effect and recourse to terrorist tactics of mass destruction.

The political and psychological basis for exceptions to the general rule that terrorists are not inclined to resort to tactics of mass destruction has been analyses, in particular, in the study by J. Knatson. The first group of exceptions is related to cases of mental disorders of an individual who has reduced the ability to plan for them-selves, to develop a plan of action, and to identify promising personal goals. This category of psychotic individuals is prepared and used in operations to perform the blackest work. This case of J. Knutson connects with another psychological dilemma that any terrorist faces in one way or another – self-identification with violence. Murder is alien to human nature, so the corresponding intensive special training on the reutilization of violence is aimed at forming unconditional obedience to orders in such a way that the psychotic personality is under the full control of the terrorist group or regime.

The second group of exceptions to the general rule is attributed by Knutson to irrational behavior and is formed on the basis of introduction of the main components of fanaticism into the human psyche, the so-called «soldier» psychology – the psychological state of the subject's orientation to victory, along with the desire to avoid the psychological impact of acts of general violence[9]. Irrationalism of terrorist behavior is achieved by dehumanizing the image of the enemy, routinizing and professionalizing the performance of destructive acts of violence, giving authority and significance to methods of murder and torture with the help of the ideology of justifying violence and prioritizing goals over means and results. Such behavior is irrational only in terms of conventional morality. It seems to the terrorist himself to be rational, justified, and objective and the only possible. In this sense, the terrorist faces another dilemma – the need to maintain an objective image of his actions. In this case, this is achieved by suppressing the individual's ability to perceive the situation realistically by the group consciousness in such a way that the individual's individual consciousness, morality and values are under pressure from group norms

[8] Arquilla J., Ronfeldt D. Networks and Netwars. The Future of Terror. Crime and Militancy. Santa Monica. 2001. 122 p. (In English).

[9] Knutson J. The Terrorist' Dilemmas: Some Implicit Rules of the Game. Terrorism: An International Journal. 1980. № 4. P. 192–296. (In English).

and values. To this end, terrorist groups not only conduct, but also divide the policy of isolation from traditional generally accepted values and morality, which are replaced by other values by supporting alternative reality as an isolation within which destructive and violent actions are allowed. For mentally normal people, unlike psychotic individuals, resorting to such unconventional values requires additional stimulation (alcohol, drugs, etc.), which is used to maintain mental and emotional balance. Taking into account these two circumstances, which are related to the ability of terrorists to discard the traditional restrictions on the use of violence and destructive behavior, is considered today as one of the most important conditions for the development of effective counterterrorism strategies and human security systems in the modern world[10].

The solution to the problem of detecting and preventing terrorist acts with maximum effectiveness depends on the application of a wide range of scientific and practical methods covering various areas of human knowledge. However, the experience with exceptionally high-tech survey techniques does not solve the problem of detecting a potential terrorist. In this regard, in our opinion, one of the leading directions is the use of profiling technology, which allows identifying potentially dangerous citizens at early stages[11].

Profiling is a collection of psychological methods for evaluating and predicting human behavior based on the characteristics of appearance, analysis of the most informative private characteristics of the individual[12]. The main purpose of profiling is to identify potentially dangerous individuals, and it is based on a visual diagnosis of the psycho-emotional state of a person (observation and a special survey, fixation of psychological behavioral responses in responses – nonverbal and verbal). Profiling uses two basic diagnostic methods: the method of psychological observation (see and find the discrepancy) and the method of questioning (ask and observe the response)[13].

The concept of profiling is based on the illegal action; training can be detected by analyzing a certain set of physical, psychological, behavioral features that make up the characteristics of suspects from the perspective

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[10] EU terrorist list. URL: http://www.consilium.europa.policies/fight-againstterrorism/terrorist-list (In English).

[11] Terrorism and Organized Crime: Monograph / S. A. Solodovnikov et al. 2 ed., Pererab. and add. M.: "UNITY – DANA". Law and Right. 2012. 247 p. (In Russian).

[12] Kazantsev S. Ya. Terrorism: Fighting. Problems of counteraction. M.: Higher School of Economics. 2004. 369 p. (In Russian).

[13] Pirogova L. K. Relevance of training of employees of ATS of technology of profiling as a preventive measure of ensuring the safety of citizens, objects and territories . Transport law. 2013. № 2. P. 20–22. (In Russian).

of their potential danger. There are indicators that are critical for classifying a person as a risk group, in particular, terrorists: demonstrative aggression; hidden aggression; excitability; and alienation. Emotional state of a person, which is assessed on the basis of signs of anxiety, fear, anxiety and others, is considered in profiling as an additional factor in the analysis of the identified dominant features. There are key signs of non-verbal and verbal human behavior, which allow the profiler to identify the terrorist in the human flow and categorize as potentially dangerous.

Today profiling is successfully used in a number of airlines to ensuring security at airports in European countries, as well as in Ukraine. This technology has been used for many years by the Israeli airline «El Al», one of the safest in the world. In 1968, it was its staff that developed this method of combating terrorism. In the U.S., there is also a profiling program, in which the search and accumulation of statistical data from suspicious behavioral patterns[14]. The Israeli profiling concept based on the premise that every passenger can be a terrorist and every object an explosive device. Therefore, all activities carried out within the framework of this technology are designed to confirm or disprove this claim.

In this regard, it should be emphasized that the profiling system can serve as a good information base for priority measures to prevent terrorism. Within the framework of this concept, general issues related to modern terrorism, as well as existing extremist organizations and their main trends are thoroughly studied. Such information is invaluable material for replicating the model of terrorist activity, which can be used to predict the occurrence of terrorist acts with a high probability.

Identification of behavioral signs of individuals with destructive intentions in places of mass gathering of people (airports, railway stations, subway, educational institutions, theaters, large shopping centers, discos, clubs, etc.) and timely localization of potential conflict is the main content of the work of a profiler working in public places.

Profilers take into account many psychological peculiarities of terrorists, adapting them to the specifics of their activities. Further work in this direction, in our opinion, should be directed towards the merger of theoretical knowledge and practical skills, since profiling is the area of anti-terrorist activities that allows for the most accurate implementation of this principle.

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[14] Pollack Joshua H., Wood Jason D. Enhancing Public Resilience to Mass-Casualty WMD Terrorism in the United States: Definitions, Challenges, and Recommendations. Defense Threat Reduction Agency, Advanced Systems and Concepts Office, Report Number ASCO 2010 042. Contract Number DTRA01–03-D0010018. URL: https://fas.org/irp/dod/dtra/resilience.pdf (In English).

Summarizing, it is possible to note that one of the most important tasks of effective use of the file – programs in the system of national and human security – is the training of specialists designed to implement these programs. A significant advantage of profiling methodology is its flexibility and versatility, which allows it to be used by special services, police and military at any objects of mass gathering of people, as well as in the field of police activities to protect public order, operational and investigative activities, with the counteraction to illegal drug trafficking, etc.

Therefore, one of the most important tasks for the education system of employees of the Ministry of Internal Affairs of Ukraine is to organize training in profiling technology. The effectiveness of profiling technology will largely depend on the level of training and professional experience of the employee. The combination of theoretical training in profiling system with practical experience of employees of the Ministry of Internal Affairs of Ukraine and other law enforcement agencies can become a serious weapon in the fight against terrorism.

5.3. The counter-terrorism program is the basis of civilizational stability

Terrorism, in any form of its manifestation, has become one of the most dangerous in its scale, unpredictability and consequences of socio-political and moral problems. Today, the issue of countering global terrorism has moved from the theoretical stage to the stage of practical cooperation between states that seek to maintain strategic stability and prevent undermining the foundations of functioning of public and civil institutions[15]. This general position would be correct if not for one circumstance: theoretical political-legal and economic problems of terrorism, dialectical ratio of its specific purpose and means of its achievement, its historical and transitional nature, etc., all this is little or no study. In the opinion of a number of researchers, terrorism is a phenomenon that does not have a past on a historical scale.

Only from the 1960s and 1970s, terrorist attacks became widely used as a means of political struggle and methods of influencing political processes taking place in society, and therefore the world community was faced with the need to intensify counteraction to acts of international terrorism. It should be noted that the geographic scope of terrorist activity,

[15] Kazantsev S. Ya. Terrorism: Fighting. Problems of counteraction. M.: GUSHEE. 2004. 369 p. (In Russian).

which has now spread to almost all regions of the world, has expanded considerably. As a response to this, the cooperation of the states in the fight against terrorism has intensified. However, against the backdrop of the general accumulated experience of legislative and practical work in this area, the need for its synthesis and analysis has sprung up through the prism of possible creative use in the development of international and national concepts of the fight against terrorism.

Systematizing the existing practice of coordinating the efforts of the international community in countering acts of terror, it should be noted that it is based on a number of universal international conventions. Among them: The International Convention for the Suppression of Unlawful Seizure of Aircraft (1970); the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973); the European Convention against Terrorism (1977); the Convention against the Taking of Hostages (1979); the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988); Convention for the Suppression of Terrorist Bombings (1997); Convention on the Marking of Plastic Explosives for the Purpose of Detection (1999); Convention for the Suppression of the Financing of Terrorism (1999), as well as United Nations Security Council Resolution 1373 on Combating International Terrorism, etc[16].

Important activities in the framework of international cooperation in combating terrorism are being carried out by international organizations and the main policy outcome documents have been developed. Thus, the Declaration and Program of Action adopted at the United Nations World Conference on Human Rights on 25 June 1993 in Vienna states that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of rights, freedoms and democracy and pose a threat to territorial integrity and security.

At the 49th session of the OAH (1994), the Declaration on Measures to Eliminate International Terrorism was adopted, expressing the conviction that more co-ordination and strengthening of cooperation between States in the fight against terrorism-related crimes, including drug trafficking, illicit arms trade. In the final declaration of the summit, which was attended by heads of 170 states, which became the central event of the jubilee 60th session of the OAH (2005), among the main activities were

[16] Scholte J. A. Globalization. A critical Introduction. London: Palgrave. 2000. 216 p. (In English).

the fight against poverty, support for peace and security, the fight against terrorism, the observance of rights person, etc.

In turn, at a meeting on combating terrorism (Paris, 30 July 1996), the ministers attending the meeting adopted a document in which they resolved to give priority to combating terrorism and analysis emerging trends in the development of terrorism in the world. One of the recommendations is to «improve the interaction between individual bodies and agencies dealing with different aspects of the problem»[17].

Particular attention should be paid to identifying and developing methods for identifying and marking explosives and other items that could result in death or injury. The meeting called on all States to take control of non-governmental organizations (humanitarian, cultural or social) that could serve as a front for terrorist activities. The new means of communication used by terrorists to promote their own ideas and communicate with each other should receive close attention. These are primarily private means of encrypting the information transmitted.

The adoption of national laws to better control the production, trade and export of arms and explosives was highlighted in a separate paragraph. The document obliged the signatories to abandon any passive or active support for terrorists and to strengthen legal measures to prosecute terrorist activities; to bring to trial any person accused of committing, preparing or assisting in the commission of terrorist acts. It was also recommended that all States prevent the movement of terrorist groups and their individual members and, to that end, introduce stricter border controls and rules on identity and visa documentation.

The expert group on transnational organized crime, meeting in Paris on 12 April 1996, adopted a number of recommendations, such as: States should review their legislation relating to criminal offences, identify a central authority whose structure should be appropriate to the rapid transmission of requests for acts of terrorism and those under preparation. Criminal acts, methods and practices of terrorism, as well as the expressed determination to act to eradicate them, both bilaterally and through multilateral cooperation, were condemned[18].

In the summer of 2005, the European Union drew a line under the previous development of the European community and developed a new vision for the continent. The European Commission's particular focus was

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[17] EU terrorist list. URL: http://www.consilium.europa.policies/fight-againstterrorism/terrorist-list (In English).

[18] Schori Liang Christina. The Criminal-Jihadist: Insights into Modern Terrorist Financing. Strategic Security Analysis. URL: http://www.gcsp.ch/download/6084/ (In English).

on the security of European citizens and the fight against terrorism. The European Commission has prepared the link of key security events in Europe. It is called «Improving European industrial capacity in security research». The proposed measures aim at bridging the gap between civil research supported by EU programs and national and interstate security initiatives. These measures are part of the EU's Seventh Framework Program (2007-2013). Among the selected projects are: improved protection of rail and subway passengers; safer European borders; protection of computers connected to networks; airline safety information network and training; faster and more effective crisis management, airline protection; path to safety: intelligence compatibility; crisis management: real-time monitoring of people indoors; safety research information support network; interface standardization in harbors and at border crossings; unmanned aviation: air surveillance devices; innovative technologies for security and protection of privacy and human rights; exchange of classified information[19].

The world's leading countries have come to realize that the criminal world has come together much earlier than their law enforcement agencies have realized that terrorism can only be defeated through joint efforts. Thus, the Law of Ukraine «On Combating Terrorism» states that terrorism is a common challenge against all countries, requiring a joint response, and today all countries of the world must unite to fight this threat, to defeat this evil[20].

As for the situation in the post-Soviet republics, it should be noted that the criminal world, in contrast to the political world, with the destruction of the common legal space in the former Soviet Union, quickly consolidated. Deprivation of law enforcement agencies and special services of the former Soviet republics of a single core led to fragmentation of their efforts, which was immediately used by criminals. Recent years have seen an increase in the number of serious crimes of a transnational nature. Various manifestations of terrorism, drug trafficking and smuggling of weapons and military equipment[21] are widespread.

A number of major inter-State instruments have been signed since 1991 to coordinate the efforts of the competent authorities of Commonwealth of Independent States Member States to combat terrorism

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[19] European Union Terrorism Situation and Trend Report (TE-SAT). URL: https://www.europol.europa.eu/sites/default/files/europol_tesat_2016.pdf (In English).

[20] Law of Ukraine "On Combating Terrorism" of March 20, 2003, No. 638. Information from the Verkhovna Rada of Ukraine. 2003. No. 25. Art. 180 (In Ukrainian).

[21] Meeting of the Council of Heads of State of the CIS. URL: http://kremlin.ru/events/president/news/50515 (In Russian).

and other dangerous crimes. Among them: The Agreement on the Concept of Military Security of the Member States of the Commonwealth of Independent States is a set of agreed and officially accepted views on the protection of the CIS Member States from external threats, ensuring territorial integrity and political stability, as well as an agreement on cooperation in the field of prevention and elimination of consequences of natural and man-made disasters. In 1995-1996, the Concept of Formation of the Information Space of the Commonwealth of Independent States was adopted, and included a set of measures and conditions of mutually beneficial development of interstate information exchanges in the interests of cooperation of the CIS member states in these areas of activity and in accordance with international principles of information dissemination, as well as the Concept of Collective Security of the Collective Security Treaty states, which recognized The most important stage in the codification of the activity was the adoption in 2000 of the Concept of Collective Security of the States Parties to the Collective Security Treaty. The Council of Heads of State of the Joint Action Program to Combat Crime for the period up to 2002.

However, it should be noted that the provisions referred to in the international instruments discussed above are usually not sufficiently specific, which significantly slows down their use by law enforcement and intelligence agencies of States for specific practical purposes.

If we look at the legislation of the United States, Italy, the United Kingdom, France and other countries, then its analysis allows us to identify certain regularities in the fight against terrorism:

– Codification of legislative norms in the field of combating terrorism contributes to its more effective implementation;

– Domestic law should respond in a timely manner to changes in international treaty practice in this regard, consistently reflecting all its positive aspects;

– Despite the trend towards democratization of their legislation in the developed world, States provide for a higher degree of responsibility and punishment for terrorist acts and participation in terrorist activities;

– When preparing and adopting legislative and other normative acts regulating the fight against terrorism, it is advisable to proceed from the peculiarities of the complex socio-political and criminogenic situation in

the country or region, rather than to adhere to the so-called principle of modeling[22].

Thus, according to the author, it is obvious that in order to combat this common threat it is necessary to unite the efforts of all state and public structures, branches of government, mass media. A strategy to combat terrorism is needed.

Today, international terrorism creates additional challenges for national and international security, requires the improvement of anti-terrorist policy measures and the fight against terrorism at both the national and international levels. The efforts of many countries are aimed at strengthening protection against the terrorist threat. From the current trends of counterterrorism, we can highlight the following:

1. International cooperation and information exchange between countries on counter-terrorism issues. This was the subject of discussion at the meeting of the United Nations Security Council on 12 December 2016, when resolution No. 2322 (co-authored by Ukraine) was adopted calling on States to strengthen and expand inter-State cooperation and mutual assistance in the field of combating terrorism, exchange of information on terrorist organizations and terrorist fighters, including their biometric and biographical data. Emphasis is placed on the importance of judicial and law enforcement cooperation in the investigation of terrorism-related offences[23].

In this context, we can highlight as an example of the long-term cooperation on counterterrorism the U.S. interaction with the European Union (primarily France, Germany and the United Kingdom), which has been expanding since 2001, when the administration of George W. Bush signed a key agreement with the EU Police Service (Europol). This enabled the exchange of strategic and technical information on counter-terrorism, money laundering, and illicit trafficking in drugs, nuclear, radiological substances and human beings. Supplementary agreement concluded in 2002 Europol and the US authorities have allowed for the exchange of personal data of suspects and have also introduced the institution of liaison officers. Cooperation between the EU and the U.S. has since expanded to include counterterrorism financing, illegal migration and foreign terrorist fighters. Extradition procedures have been simplified and legal cooperation has been strengthened (for example, joint investigation

[22] Gunaratna Rohan. After Nice: The Threat Within Europe. URL: https://www.rsis.edu.sg/wp-content/uploads/2016/07/CO16183.pdf (In English).

[23] Positive-Peace-Report 2016. The Institute for Economics and Peace and University of Maryland. URL: http://economicsandpeace.org/wp-content/2016/09/Positive-Peace-Report2016.pdf (In English).

teams or videoconferences on specific criminal proceedings have been introduced)[24].

Two new agreements with Europol on countering illegal migration and foreign fighters were signed by the relevant U.S. agencies in February 2015, providing a platform for information exchange regarding individuals who facilitate the recruitment, transfer and financing of foreign fighters[25].

2. At the national level, strengthen cooperation and exchange of information on counter-terrorism issues among the competent authorities. A number of measures have been taken by EU Member States, primarily to improve the efficiency of interaction and information exchange between national intelligence and police services, as well as to strengthen border control. Based on information provided by the Anti-Terrorist Group (The Hague), in 2016, a single database was created, in which more than 20 European intelligence services have access in real time. It is planned to implement a pilot project on automated data exchange between law enforcement agencies of the EU member states regarding persons with criminal records. Also, the work on the introduction of the European Travel Authorization Information System is being intensified.

3. Prevention of terrorism, including counteraction to radicalization. Today, specialized programs have been introduced and are being implemented in many countries to prevent the spread of extremist views in society, to prevent young people from being drawn into terrorist organizations, and to apply procedures for granting amnesty to individuals who have participated in terrorist activities and adapting them to peaceful life. Thus, a new OSCE Special Representative has been appointed to coordinate the exchange of experience gained through the implementation of such programs by the 57 member countries of the organization. Governments have drawn attention to the possibility of radicalizing people in places of detention. In order to prevent this threat, the PRC is now considering isolating convicted terrorists from other prisoners[26].

4. Introduction of new technologies to combat terrorism by state authorities. The establishment of the European Centre for Combating Terrorism and Radicalization on the Internet is planned to promote and recruit new followers, given the active use of the Internet and social

[24] Pirogov L. K. The relevance of training employees of ATS technology profiling as a preventive measure to ensure the safety of citizens, objects and territories. Transport Law. 2013. № 2. P. 20–22. (In Russian).

[25] The Global Terrorism Index 2015. The Institute for Economics and Peace and University of Maryland. C. 45–48. URL: http://economicsandpeace.org/wp-content/uploads/2015/11/Global-Terrorism-Index2015.pdf (In English).

[26] Foreign Terrorist Organizations. Bureau of Counter terrorism. URL: https://www.state.gov/j/ct/rls/other/des/123085.htm (In English).

networks by terrorist organizations. This will be part of the Europol Internet reference office. In the Czech Republic, the Centre for Combating Terrorism and Hybrid Threats has recently been established within the Czech Ministry of the Interior, focusing on Internet content analysis and response. In the U.S., another area of interest is the fight against terrorism, given the specifics of the 2016 terrorist attack in Nice, France, when the attacker used a truck.

For example, in the United States alone, some 250 million vehicles will be connected to the Internet of Things by 2020, which can be managed through the World Wide Web, enabling terrorists to intercept the management of such assets and carry out terrorist attacks remotely, even without crossing the national border.

Therefore, in the U.S.A. Department of Justice, in view of such a potential threat, a separate group that deals solely with Internet matters has begun to function.

5. It is necessary to specify the sources and determinants of terrorist manifestations, which may include: a sharp drop in living standards of the population, reduction or lack of social protection, strengthening of social injustice, exacerbation of political struggle, growth of nationalism and separatism, imperfection of legislation, decline in the authority of the authorities and its representatives' ill-considered decisions[27].

Analyzing the state of the fight against terrorism in Ukraine, it should be noted that currently the Concept of the fight against terrorism (hereinafter – the Concept), adopted by the Decree of the President of Ukraine on April 23, 2013 No. 230/2013, according to which the main threat to Ukraine is the activity of international terrorist organizations. Thus, it states: «Currently, due to the effective implementation of domestic and foreign policy of Ukraine, it does not apply to states with a high probability of terrorist acts or terrorist attacks on their territories by international terrorist organizations against their representations abroad. In Ukraine, there are no internal prerequisites for the emergence of organizations that have used terrorist methods as a means of achieving political goals or drawing public attention to their ideological or other views».

It is clear that such an assessment of the terrorist threat is no longer true. However, it is difficult to disagree with the Concept's definition of a number of external and internal factors that may become the basis for

[27] Definitions of Community Resilience: An Analysis: A CARRI Report. URL: http://www.resilientus.org/reports.html (In English).

increasing the level of the terrorist threat in the country. Analysis of the activities of international terrorist organizations and the conduct of ATU in Ukraine in recent years allows us to expand the list of such impacts. This document identifies eight main directions of implementation of measures and five priorities of the state policy in the field of combating terrorism, based on a comprehensive systemic approach to solving the problem and covers all generally recognized components of the process of countering terrorism, including: prevention of terrorist activities, detection and cessation of such activities, elimination and minimization of its consequences, as well as information, scientific and other support for the fight against terrorism, international cooperation in combating terrorism[28].

Thus, it is advisable to identify the priorities of the state policy in the field of counterterrorism, including the following:

– Prevention and elimination of threats to the life and security of citizens, the interests of society and the State, which arose as a result of the Russian Federation's aggression against Ukraine, and had an armed conflict on the territory of Donetsk and Luhansk oblasts;

– Ensuring the necessary level of anti-terrorist protection after returning to the control of certain areas of the Donetsk and Luhansk regions;

– predicting and suppressing possible terrorist manifestations in the rest of Ukraine as a result of Russia's hybrid aggression;

– Updating the effectiveness of the unified state system of prevention, response and termination of terrorist acts and minimizing their consequences.

We can agree with the idea of domestic researchers that the main tasks in the field of improving the state system of counterterrorism in Ukraine are:

– Regulation of the procedure of interaction between the subjects of the fight against terrorism in various situations;

– The procedure for interaction between the State and citizens and society in the implementation of the main objectives of State policy in the relevant area (ensuring public awareness of the danger and the scale of response to the threat, including):

– Prevention (avoidance of involvement in terrorist activities);

– Prosecution (cessation of terrorist attacks and investigations);

Strategic context;

[28] Law of Ukraine "On Combating Terrorism" of March 20, 2003, No. 638. Information from the Verkhovna Rada of Ukraine. 2003. No. 25. Art. 180 (In Ukrainian).

– Protection (improving the security of suspending terrorist attacks);

– Preparedness (minimizing the consequences of an attack and early recovery);

– the actions of a foreign country[29]

Besides, the following questions require special study: terrorism is generated by growing contradictions between the West and the East, the North and the South, it is not one of the causes of terrorism «hybrid» and local wars, which are sometimes waged by reactionary forces of so-called «civilized» states against «uncivilized» peoples, what is the role of arms and drug trafficking in the emergence of terrorism?

CONCLUSIONS

The world policy is focused today on the search for effective solutions to security problems and sees them in the creation of a global system to counter modern threats and challenges of globalization. The system is designed to ensure international stability and sustainable development in the long term, primarily through political regulation of global processes. The international anti-terrorist coalition, as well as the network of mechanisms and agreements created by its participants to ensure security in the world in response to the challenges of terrorism, is considered as the prototype of the system, which is based on a strategy of coercion for short-term prevention of terrorism. At the same time, it is increasingly clear that a strategy of coercion and deterrence of extremism cannot guarantee long-term security in a globalized world. Global politics is faced with the need to set new priorities for global security policy, opportunities and means of political regulation in the global sphere.

The fight against and elimination of terrorism is a long-term process that involves the creation of the necessary objective and subjective conditions to achieve this goal. At the same time, it is impossible to destroy terrorism by force alone: violence inevitably generates new violence.

The most important prerequisite for eradicating terrorism is the stabilization of the economic and political situation in countries and the strengthening of democratic principles in public and political life. It is necessary to form a society in which the social base of terrorism will be sharply reduced. It is especially important that stable democratic political

[29] Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction" dated October 14, 2014, No. 1702-IV. Information from the Verkhovna Rada of Ukraine. 2014. No. 50-51. Art. 2057. (In Ukrainian).

systems, mechanisms of civilized political dialogue and rotation of power are formed in the states. To supplant terrorism from life, a high level of political and legal culture in society is needed, as well as a clear establishment of legal sanctions for terrorist actions.

It is necessary to create favorable conditions for the normal even development of different ethnic groups and ensure the realization of their interests in order to prevent conflicts on the national basis. The task of the states is to form the self-awareness of all ethnic groups living in the given country, at which the feeling of belonging to the state would be a priority before the factor of ethnicity in the process of self-identification of citizens.

In addition, there is a need to strengthen the efforts of State bodies in carrying out preventive activities. Necessary measures to strengthen border protection, increase control over the activities of foreign organizations to minimize the possibility of importing extremism from other countries. Measures aimed at reducing unemployment and solving urgent social and economic problems can reduce social tension in society and neutralize the main source of potential social excesses.

Meetings and agreements at the highest level alone are not sufficient to eradicate terrorism. An effective response to international terrorism requires the development and implementation of a comprehensive program that includes political, social, economic, legal, ideological, special and other aspects. It must take into account the interests of the population, the problems and the conflict-generating potential of terrorism around the world. There is also a need for interaction and coordination of all forces of society interested in solving this topical problem.

One of the most important areas of activity of the heads of state should be joint cooperation to prevent, localize and stop regional outbursts of extremism, as some conflicts caused by terrorists may cause destabilization in other states. The tragic results of terrorism, which characterize modern politics, should serve as an important warning to all political forces that attempts to solve political, economic and other problems with the help of violence do not contribute to the solution of the set tasks, but, on the contrary, lead to the increase and growth of contradictions in society.

SUMMARY

One of the main features of international political and legal development is the unresolved problem of national security of the state and international security.

This is particularly relevant in the current globalized environment, when the economy, informatization and democratization of international relations create unprecedented opportunities for development, but at the same time increase the vulnerability of the system to terrorism, the use of weapons of mass destruction, etc. Scientists of our time are faced with urgent tasks, the solution of which allows the study of the problems of state creation, especially such important determinants of this process as legal regulation in the field of national and international security of the state in the context of globalization. Proceeding from this, scientific researches in this context, in which the basic principles of organization of national and international security are systematically revealed, are expedient and timely.

The author investigates the range of issues related to the policy of reconceptualization of security of international systems, concepts of national security of international participants, as well as mechanisms of their origin, formation and adaptation in the modern globalized world. The value of the work is, first of all, the fact that it presents an informatively rich factual material analysis of the state and prospects of the state and sovereignty in the context of threats of globalization, national and international security policy.

Thanks to the implementation of the chosen research algorithm, scientific provisions have been developed and new scientifically grounded results have been obtained, which together solve an important scientific problem – the reconceptualization of the problem of national security of the state in the context of globalization and the development of ways to improve its regulatory and legal framework.

Due to the implementation of the chosen research algorithm, scientific provisions have been developed and new scientifically grounded results have been obtained, which together solve an important scientific problem – the reconceptualization of the problem of national security of the state in the context of globalization and the creation of ways to improve its regulatory and legal framework.

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CHAPTER 6
PREPAREDNESS OF THE SYSTEM OF THE MIA OF UKRAINE FOR THE TERRITORIAL DEFENSE MISSION UNDER HYBRID THREATS

Tsyganov O. G.

INTRODUCTION

Nowadays, the majority of leading international and domestic experts and analysts argue that in the course of the insidious neo-imperial «hybrid policy,» the Russian Federation has unleashed and now continues the so-called «hybrid warfare» against Ukraine, which combines, on the one hand, aggressive hostilities under the cover of illegal armed groups, inconspicuous, hidden support of such armed formations by the aggressor state; on the other hand, the use of a wide range of political, economic, advocacy and public outreach activities, leading to, as a rule, the hybrid warfare and accompanying it throughout hostilities.

Russia's hybrid aggression against Ukraine developed into an active phase in early 2014, although Russia began to conduct the subversive activity against our state immediately after the proclamation of Ukraine's independence in 1991. However, during this rather long period neither Ukraine nor the countries of the Transatlantic Partnership (NATO-EU) have conducted thorough studies to analyses and evaluate the conclusions and lessons of this hybrid warfare, which would enable to develop the security and defense sector of both individual states and coalitions of countries in the context of «new generation warfare.» For example, the issues of the essence and content of «hybrid warfare» and «hybrid threats,» as well as counteracting these phenomena as the latest types of global confrontation, are under the focus in the works of domestic scientists and experts such as T. Andriievskyi, S. Borshchevskyi, K. Brychuk, O. Vlasiuk, M. Honchar, V. Horbulin, R. Dodonov, A. Yermolaiev, O. Kresin, M. Lepskyi, E. Libanova, O. Liashenko, V. Martyniuk, Yu. Mikhieiev, M. Pohrebinskyi, K. Savchuk, O. Stoiko, H. Cherniavskyi and others. However, scientists do not focus comprehensively on the administrative and legal aspects of the territorial defense mission of Ukraine under hybrid threats.

6.1. The territorial defense mission of Ukraine under hybrid threats

Famous American military theorist Frank Hoffman argues that the modern era wars are characterized by the process of hybridization, which involves traditional forms of warfare, irregular conflicts, cyberwar, organized crime, terrorism, and so on[1]. Thus, foreign experts interpret the hybrid warfare as: 1) undeclared clandestine hostilities in which the opposing party attacks State structures and the regular army of the enemy with the help of local rebels and separatists, supported by weapons and finance from abroad and from some internal structures (oligarchs, organized crime, nationalist and pseudo-religious organizations); 2) use of usual, irregular and asymmetric actions in combination with information and psychological manipulations, political and ideological conflict. Meanwhile, other experts use the term «hybrid» in order to reflect the potential threat from the regular and irregular armed forces and do not consider the hybrid warfare as a new form of warfare, but rather as a synonym for a full spectrum conflict[2]. It stands to reason that the U.S. Department of Defense has proposed using the term «full spectrum operation» instead of the term «hybrid warfare»[3].

The hybrid warfare is preceded by a long and complex preparation, including hybrid threats, which are challenges for the State. These threats include the creation of political and social movements that sympathize with the future aggressor; its setting up a favourable information field; propaganda; sabotage, deliberate infliction of damage, subversion and terror; aggressor's imposition of own historical, cultural, ideological values (that is, all that is aimed to incline the population towards the aggressor by means of so-called «soft power»), etc.

In practice, any threat may be hybrid if it is not limited to one form and measure of warfare. For example, the European Union classifies the areas of response to such threats into the information, energy, transport and infrastructure, space, military, health and food security, cyberspace, financial sector, industry, public or social dimension. In addition, the criterion for the conceptual delimitation of the two terms «hybrid threats» and «hybrid warfare/conflict» is the fact of State sovereignty violation,

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[1] Hoffman F. G. Hybrid threats: Reconceptualizing the evolving character of modern conflict. *Strategic Forum*, no. 240, April 2009. Institute for National Strategic Studies National Defense University. Retrieved from http://www.ndu.edu/inss.

[2] Mikhieiev Yu.I., Cherniavskyi H.P., Turchenko Yu.V., Pinchuk O.I. Definitsii poniattia "hibrydna viina" [Definitions of the concept of "hybrid warfare"]. Retrieved from http://miljournals.knu.ua/index.php/zbirnuk/article/view/140/126 (Accessed 25 March 2019). (in Ukrainian)

[3] Cox D. What if the Hybrid Warfare / Dan G. Cox. Retrieved from http://www.e-ir.info/2013/02/13.

such as the border crossing by armed or subversion units, further seizure of strategically important objects, killing of military personnel of a country suffering from aggression, etc.

The Ukrainian legislation provides no definitions of «hybrid warfare» and «hybrid threats.» However, these terms are used in official documents of our state. Therefore, according to clause 4.3. of the National Security Strategy of Ukraine, approved by the Decree of the President of Ukraine no. 287/2015 of May 26, 2015, the key priority of the national security policy is to ensure the preparedness of the State, its economy and society to defend and deter foreign aggression in all forms and manifestations (in particular in the form of hybrid warfare), raising the defence level of the State[4]. The general part of the Strategy for the Development of the Ministry of Internal Affairs until 2020, approved by the Decree of the Cabinet of Ministers of Ukraine no. 1023-r of November 15, 2017, also provides for that modern challenges and threats, first of all hybrid, are due to the complex of socio-demographic, economic, political, legal, psychological and technological factors, and require a systemic response, adequate transformation of the national security sector, in particular the Ministry of Internal Affairs[5].

An integral part of the state measures, implemented within the framework of national security and defense of Ukraine and directly aimed at protecting Ukraine's national interests from external and internal threats, is measures for preparation and conduct of territorial defense. In the course of the territorial defense mission, the national security subjects, defined by the legislation of Ukraine, organic to the State Military Organization (the security and defense sector), carry out a complex of measures aimed at transferring its units to functioning in the context of a special period. Preparation for territorial defense is an integral part of State preparation for defense and is divided into preparation in peacetime and in a special period, including the introduction of martial law in Ukraine or its separate areas. Measures for the preparation and conduct of territorial defense are

[4] Pro rishennia Rady natsionalnoi bezpeky i oborony Ukrainy vid 6 travnia 2015 roku "Pro Stratehiiu natsionalnoi bezpeky Ukrainy" [On the decision of the National Security and Defense Council of Ukraine of May 6, 2015 "On the Strategy of National Security of Ukraine"] (Decree of the President of Ukraine no. 877/15 of May 26, 2015). *Ofitsiinyi visnyk Ukrainy [Official Bulletin of Ukraine]*, no. 43, 2015. Art. 1353. (in Ukrainian)

[5] Pro skhvalennia Stratehii rozvytku orhaniv systemy Ministerstva vnutrishnikh sprav na period do 2020 roku [On approving the Strategy for the Development of the Ministry of Internal Affairs until 2020] (Decree of the Cabinet of Ministers of Ukraine no. 1023-r of November 15, 2017). *Ofitsiinyi visnyk Ukrainy [Official Bulletin of Ukraine]*, no. 23, 2018. Art. 808. (in Ukrainian)

implemented throughout Ukraine or in its separate areas, except zones/areas of warfare and territories recognized by acts of the Verkhovna Rada of Ukraine as temporarily occupied territories of Ukraine.

Today the legal framework for the implementation of territorial defense of Ukraine is the Constitution of Ukraine; the Law of Ukraine «On the Defense of Ukraine» no. 1932– XII of December 6, 1991; the Law of Ukraine «On National Security of Ukraine» no. 2469-VIII of June 21, 2018; the National Security Strategy of Ukraine, approved by the Decree of the President of Ukraine no. 287 of May 26, 2015; the Military Doctrine of Ukraine, approved by Decree of the President of Ukraine no. 555 of September 24, 2015; the Concept of development of the security and defence sector of Ukraine, approved by the Decree of the President of Ukraine no. 92/2016 of March 14, 2016; Regulations on territorial defense of Ukraine, approved by the Decree of the President of Ukraine no. 406/2016 of September 23, 2016; international legal acts on security and defense issues, ratified by Ukraine in accordance with the procedure established by law, as well as other legal regulations of State bodies and decisions of local self-government bodies on these issues.

However, the current legal regulation of territorial defense of Ukraine is limited to Article 18 of the Law of Ukraine «On Defense of Ukraine» and the Regulation on Territorial Defense of Ukraine, approved by the Decree of the President of Ukraine no. 406/2016 of September 23, 2016. Moreover, in accordance with paragraph 17 of the first part of Article 92 of the Basic Law of Ukraine, the fundamentals of national security, the formation of the Armed Forces of Ukraine and ensuring public order shall be determined exclusively by laws of Ukraine[6]. However, Section II of the Legislative Reform Support Plan in Ukraine, approved by the Resolution of Verkhovna Rada of Ukraine no. 509-VIII of June 4, 2015, provides for the adoption of the relevant Law of Ukraine «On Territorial Defense of Ukraine»[7]. Meanwhile, the Draft Law «On Territorial Defense of Ukraine» no. 2411a of July 17, 2015, has not yet been adopted by the legislative body of Ukraine and remains at the stage of legislative drafting activity (moreover, on February 21, 2017, it was withdrawn at all). Moreover, issues related to the subject of legal regulation of the draft law in

[6] Konstytutsiia Ukrainy [The Constitution of Ukraine] (No. 254k/96-VR of 28 June 1996). *Vidomosti Verkhovnoii Rady Ukrainy [Bulletin of the Verkhovna Rada of Ukraine]*, no.30, 1996. Art. 141. (in Ukrainian)

[7] Pro Plan zakonodavchoho zabezpechennia reform v Ukraini [On the Legislative Reform Support Plan in Ukraine] (Resolution of Verkhovna Rada of Ukraine no. 509-VIII of June 4, 2015). *Ofitsiinyi visnyk Ukrainy [Official Bulletin of Ukraine]*, no. 52, 2015. Art. 1668. (in Ukrainian)

accordance with the Explanatory Note thereto are regulated by the Constitution of Ukraine, the laws of Ukraine «On Defense of Ukraine,» «On Military Duty and Military Service,» «On Mobilization Preparation and Mobilization,» «On the Armed Forces of Ukraine,» «On the National Guard of Ukraine,» «On the State Border of Ukraine,» etc.[8]

Therefore, the legal framework on territorial defense in Ukraine consists of numerous legal regulations of various levels that are connected and coordinated with each other insufficiently, are contradictory and lack a clear mechanism for their implementation, and also contain concepts and terms, that do not have unambiguous understanding and interpretation for their practical application. Meanwhile, a unified legislative act on this topical issue has not been adopted and a comprehensive solution to the problem issues of territorial defense in Ukraine has not been found.

Therefore, today the issue of preparedness of the forces and assets, involved in the territorial defence mission of Ukraine under hybrid threats, is defined in some way in the Law of Ukraine «On Defence of Ukraine» no. 1932-XII of December 6, 1991 and the Regulation on Territorial Defence of Ukraine, approved by the Decree of the President of Ukraine no. 406/2016 of September 23, 2016.

For example, Article 18 of the Law defines the territorial defence of Ukraine as a system of nationwide military and special measures carried out in a special period in order to:

– protect and defend the State border;

– ensure the reliable functioning of State authorities, military management bodies, strategic (operational) deployment of troops (forces);

– protect and defend important objects and communications;

– combat subversion and reconnaissance forces, other aggressor's armed formations and anti-state illegal armed groups;

– maintain the legal regime of martial law.

Within the framework of their powers, the Armed Forces of Ukraine, other military formations, formed in accordance with the laws of Ukraine, the National Police, the units of the State Special Transport Service, the State Service for Special Communications and Information Protection, and the relevant law enforcement bodies of Ukraine are involved in the territorial defence mission.

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[8] Poiasniuvalna Zapyska do proektu Zakonu Ukrainy "Pro terytorialnu oboronu Ukrainy" [Explanatory Note to the Draft Law of Ukraine "On Territorial Defence of Ukraine"]. Retrieved from http://search.ligazakon.ua/l_doc2.nsf/link1/GH1UZ68A.html (Accessed February 1, 2019). (in Ukrainian)

The key objectives, measures for the preparation and conduct of territorial defence, powers of the Cabinet of Ministers of Ukraine, ministries, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, local State administrations, local self-government bodies, military formations and the basis for their interaction are determined by the Regulation on Territorial Defence of Ukraine, approved by the President of Ukraine[9].

However, the analysis of the Regulation has shown that the issue of combat (special) employment of forces and assets, involved in the territorial defence mission, is not considered properly in this document, despite modern trend to the joint use of forces and means in territorial defence in armed confrontation leading to the most effective mission implementation.

Therefore, the territorial defence participation of military, militia and civilian formations, law enforcement bodies, other bodies of public authority and organizations, joint training of military formations and law enforcement bodies for actions in crisis situations (including during a special period), centralized command and control of these State formations (forces), balanced military-civil relations and other territorial defence issues should be decided on the basis of a systematic approach at the interagency level within the framework of a single State program, aimed at proposing ways to comply the system of territorial defence of Ukraine with modern requirements and capabilities of the State. The most important area of State's defence capability support is the development of fundamentally new approaches to territorial defence organization and the improvement of the system of management of forces and means involved in the territorial defence mission.

6.2. Organizational and legal support of the Ministry of Internal Affairs of Ukraine for combating hybrid threats and ways of its improvement

One of the key factors in ensuring Ukraine's security and defence under hybrid threats is the preparedness of forces and means of executive power and military formations, directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs, to the

[9] Pro oboronu Ukrainy [On Defence of Ukraine] (Law of Ukraine no. 1932-XII of December 6, 1991). *Vidomosti Verkhovnoi Rady Ukrainy [Bulletin of the Verkhovna Rada of Ukraine]*, no. 9, 1992. Art. 106. (in Ukrainian)

territorial defence mission. The role of the Ministry of Internal Affairs of Ukraine in combating contemporary challenges and threats is to ensure the development of a safe living environment, as the basis of security throughout Ukraine, as well as a modern system of internal security, as a factor deterring the further spread of external aggression. In addition, the powers of central executive bodies, directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine (except for the State Migration Service of Ukraine and the State Emergency Service of Ukraine), as well as the National Guard of Ukraine (hereinafter – the bodies of the MIA), concerning the preparation and conduct of territorial defence are:

– participation in territorial defence planning;

– participation in establishing territorial defence management system;

– combat subversion and reconnaissance forces, other aggressor's armed formations and anti-state illegal armed groups, in cooperation with the Armed Forces of Ukraine, other bodies of the MIA, the State Special Transport Service, the Security Service of Ukraine;

– participation in territorial defence training, ensuring participation of subordinate territorial bodies, forces and means.

Moreover, the structural units of the MIA of Ukraine (namely, the National Police, the National Guard and the State Border Guard Service of Ukraine) are in charge of special missions of territorial defence of Ukraine in accordance with their authority. For example, the National Police ensures public safety and public order protection in public places, regulates traffic and controls the observance of the Road Traffic Rules by its participants, contributes to ensuring, in accordance with the law, the legal regime of martial law if it is declared throughout Ukraine or in a particular area, etc.; the National Guard engages in activities related to the cessation of armed conflicts and other provocations at the State border, protects important State facilities, special cargoes, provides protection of State authorities, participates in the implementation of the legal regime of martial law, etc.; the State Border Guard Service protects the State border on land, sea, rivers, lakes and other reservoirs, ensures compliance with the State border regime and frontier regime, participates in the implementation of the legal regime of martial law in controlled border areas, and so on.

Ministries (including the MIA of Ukraine) and other central executive authorities:

– ensure the implementation of laws and other legal regulations on territorial defence; coordinate with the General Staff of the Armed Forces of Ukraine and provide, in accordance with the scope of their powers, the implementation of activities relating to preparation of communication system, transport, other infrastructure objects for territorial defence in the relevant area of management and the national economy;

– plan, organize and control the implementation of territorial defence activities within their competence during the mobilization preparation and transfer of management bodies to functioning in a special period, enterprises, institutions and organizations subordinate to them, involved in mobilization missions (orders);

– engage in training on territorial defence.

Territorial defence authorities interact with the State Emergency Service of Ukraine and its local bodies in the course of:

1) territorial defence preparation on:

– coordination of plans for civil protection in a special period with of territorial defence plans, plans for participation in territorial defence;

– formation of a territorial defence management system;

– assessment of factors affecting the implementation of activities relating to preparation and management of territorial defence;

2) territorial defence relating to the exchange of information on:

– ground, air, radiation, chemical, biological conditions;

– emergency situations and elimination of their consequences;

– performing missions of civil protection in territorial defence zones, where the legal regime of martial law has been introduced.

The analysis of the powers of the MIA's structural elements regarding participation in territorial defence indicates that the powers of the Ministry of Internal Affairs of Ukraine in this matter are not defined and regulated properly, although according to paragraph 2 of Article 12 of the Law of Ukraine «On National Security of Ukraine» no. 2469-VIII of June 21, 2018, the MIA of Ukraine is a part of the security and defence sector of the State[10]. Moreover, the Concept for the Development of the Security and Defence Sector, approved by the Decree of the President of Ukraine no. 92/2016 of March 14, 2016, provides for the improvement of the territorial defence system in order to form an active reserve of the Armed Forces of Ukraine, the introduction of a practical model of interaction between

[10] Pro natsionalnu bezpeku Ukrainy [On National Security of Ukraine] (Law of Ukraine no. 2469-VIII of June 21, 2018). *Ofitsiinyi visnyk Ukrainy [Official Bulletin of Ukraine]*, no. 55, 2018. Art. 1903. (in Ukrainian)

territorial defence units with State armed formations, and in accordance with paragraph 3.3 of this Concept, the MIA of Ukraine is the main body in the system of central executive authorities at present, ensuring the formation of the State policy in activities of the central executive bodies under its control[11], which are direct territorial defence missions.

It should be noted that in public safety and civil protection of Ukraine, the effectiveness of the territorial defence mission under hybrid threats depends on many external and internal factors in the activities of the MIA bodies involved in the mission. First of all, the factors directly affecting the missions under hybrid threats include: the preparedness of the forces and means of the MIA to carry out objective set; organization of training required for these bodies; ensuring effective interaction at all levels between these bodies, as well as other forces involved in the territorial defence mission; proper organization and tactics of these forces; their comprehensive logistical and financial support, etc.

However, evidently since 1991, Ukraine has not been paying enough attention to strengthening its own security, considering that the surrounding states are potentially friendly and do not pose serious threats to its security. As a result, every year the security system of our State weakened, which was manifested not only in the inability of the Armed Forces to perform their duties, but also in weakening the State system in general and its separate security components, such as the forces and means of the MIA of Ukraine.

Since hybrid aggression is carried out from both outside and within the country-victim, the law enforcement bodies of the State, suffering from the aggressor country, should play a key role in counteracting such aggression. However, in the run-up of the active phase of hybrid aggression of Russia, Ukraine had a significantly degraded law enforcement system, that is, the performance of Ukrainian law-enforcement bodies was characterized by a low professionalism, facts of corruption, impunity, mutual cover-up, cooperation with criminality, the presence of foreign special services agents within their ranks and the like. The general situation in the Ukrainian State did not contribute to the presence of professional, competent, moral and responsible personnel in

[11] Pro rishennia Rady natsionalnoi bezpeky i oborony Ukrainy vid 4 bereznia 2016 roku "Pro Kontseptsiiu rozvytku sektoru bezpeky i oborony Ukrainy" [On the decision of the National Security and Defence Council of Ukraine of March 4, 2016 "On the Concept of development of the security and defence sector of Ukraine"] (Decree of the President of Ukraine no. 92/2016 of March 14, 2016). *Ofitsiinyi visnyk Ukrainy [Official Bulletin of Ukraine]*, no. 23, 2016. Art. 898. (in Ukrainian)

the law-enforcement system. The low level of financial and logistical support prompted law enforcement officers to seek additional incomes, leading to corruption, protection racket, illegal activity promotion. The majority (56.8%) of Ukrainian experts argues that corrupt security forces are the first important factor of Russia's aggression against Ukraine[12].

The law enforcement bodies of Ukraine, including the MIA's bodies, often took care of not protecting community, but ensuring exclusively their own interests, as well as the interests of authorities, the oligarchy, and criminality. Frequently, the media reported on the brutal massacre of people at police stations, prostitution protection by uniformed services, drug trafficking, gambling business, illegal mining of raw materials and precious minerals, raider hunts of successful enterprises. The impunity, caused by the mutual cover-up and corruption, has contributed to the transformation of law enforcement bodies in Ukraine, subject to provide and maintain order in the State, to punitive bodies of persecution and intimidation [13].

Therefore, the level of faith of Ukrainian society in law enforcement bodies decreased sharply. According to a survey carried out by the sociological group, «Rating,» at the end of December 2011, only about 10% of the polled believed that the police was quite credible. According to the majority of respondents, the Ukrainian police ineffective performance was due to corruption (64%), low moral standards of law enforcement officers (39%), distrust of the population (39%), dependence on higher authorities (34%) and low level of training (31%)[14]. The situation worsened and, according to the Institute of Sociology of the National Academy of Sciences of Ukraine, in 2013, only 1% of Ukrainian citizens fully trusted the police[15].

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[12] Spryiannia rozbudovi mozhlyvostei Ukrainy harantuvaty bezpeku suspilstva v umovakh hibrydnykh zahroz. Rezultaty ekspertnoho opytuvannia [Facilitating the development of Ukraine's capabilities to guarantee the security of society under hybrid threats. Results of the expert survey]. Retrieved from https://geostrategy.org.ua/images/Дослідження_українською.pdf (Accessed February 21, 2019). (in Ukrainian)

[13] Hibrydni zahrozy Ukraini i suspilna bezpeka. Dosvid YeS i Skhidnoho partnerstva. Analitychnyi dokument [Hybrid threats to Ukraine and public safety. The experience of the EU and the Eastern Partnership. Analytical Paper]. Retrieved from https://www.civic-synergy.org.ua/wp-content/uploads/.../blok_XXI-end_0202.pdf (Accessed February 23, 2019). (in Ukrainian)

[14] Pravookhoronni orhany Ukrainy: dovira ta otsinky naselennia, problemy vnutrishnoi bezpeky ta hotovnist do spivpratsi [Law-enforcement bodies of Ukraine: Trust and estimation of the population, problems of internal security and readiness for cooperation]. Retrieved from http://ratinggroup.ua/research/ukraine/pravoohran_organy_ukrainy_doverie_i_ocenki_naseleniya_problemy_vnutrenney_bezopasnos_i_gotovnost_k_s.htmlм (Accessed February 25, 2019). (in Ukrainian)

[15] Kobzar H. Militsii ne doviriaiut. Cherez zhorstokist ta bezkarnist? [They do not trust the militia. Due to cruelty and impunity?] Retrieved from http://khpg.org/index.php?id=1367864828 (Accessed February 25, 2019). (in Ukrainian)

Under current external aggression against Ukraine, the requirements to the law-enforcement system, including the MIA's bodies, are extremely high. Because in the course of armed aggression, the Russian Federation also uses criminal structures to create additional threats to the security of society and destabilization of Ukraine, and these threats must be countered by law enforcement bodies.

The key objectives of the MIA's bodies, such as maintaining public security and order, ensuring the protection of human rights and freedoms, social and State interests, combating crime, include also certain missions for these bodies in the current conditions. The most important of these missions are the radical reformation of law enforcement bodies in order to transform them into a socially oriented structure and to eradicate the negative inheritance of the Soviet authoritarian system. This reform requires significant increase in the level of professionalism and responsibility of employees, which will ensure the restoration of public faith in the law-enforcement system, will enable closer interaction with citizens. The reform should also include the achievement of an adequate level of material and financial support for law enforcement personnel, which will give them a decent place and role in a democratic society. Therefore, due to the reform of the law enforcement system one of its main functions must be realised, that is, the modern law-enforcement system should become one of the truly reliable pillars of the integrity and stability of the State and the safety of its citizens.

At the same time, Russia's aggression against Ukraine has revealed that the arsenal of the actions taken, both external and internal, aimed at the destruction of Ukrainian statehood, is very broad. Therefore, currently the new functions of the MIA's bodies should be the activity renewed to ensure the integrity and stability of the State, as well as protection against new threats and the ability to respond to the latest challenges.

CONCLUSIONS

1. Since according to the Constitution of Ukraine, the fundamentals of national security, formation of the Armed Forces of Ukraine and ensuring public order shall be determined exclusively by laws of Ukraine, the current legal framework on territorial defence issues in Ukraine consists of numerous legal regulations of various levels that are connected and coordinated with each other insufficiently, are contradictory and lack a clear mechanism for their implementation, the adoption of a unified legislative act to regulate issues on preparation and implementation of

territorial defence in Ukraine and to solve comprehensively the problem issues in this sphere (in particular, regarding the territorial defence troops (forces) status definition in the structure of the Armed Forces of Ukraine, the mechanisms for involving these troops (forces) in the territorial defence mission and their weapon employment, etc.) are required.

2. Employment of troops (forces), involved in the territorial defence mission of Ukraine, their joint training for actions in crisis situations (including during a special period), centralized command and control of these State formations (forces), balanced military-civil relations and other territorial defence issues should be decided on the basis of a systematic approach at the interagency level within the framework of *a single State program,* aimed at proposing ways to comply the system of territorial defence of Ukraine with modern requirements and capabilities of the State (including economy).

3. Today a number of unresolved issues and contradictions regarding the definition of the concept of «territorial defence,» organization of the preparation and conduct of this phenomenon, definition of its place in the general system of State defence, organization of the implementation of territorial defence activities during joint forces operations in the east of Ukraine, and especially regarding the correlation with basic concepts of the security and defence sector such as «national security system,» « State military organization,» «security and defence sector,» «military formations,» «uniformed services,» «law enforcement bodies,» «special period,» «special conditions,» «antiterrorist operation,» «stabilization, specific actions,» «special operations on own territory,» «resistance movement operations in temporarily occupied territories,» etc., which have no unequivocal interpretation either in the legislation of Ukraine in general or in the regulatory framework of the relevant ministries and departments of our State. However, these concepts should be the basis for the principles of State military security and for management of its ensuring. Therefore, the regulatory framework for systematic interpretation of these concepts should be improved; accordingly, appropriate proposals in drafting a new law on the territorial defence of Ukraine should be made, as well as the Law of Ukraine «On Defence of Ukraine» should be amended and the Regulation on Territorial Defence of Ukraine should be revised substantially.

4. The Regulation on Territorial Defence of Ukraine does not mention the State Emergency Service of Ukraine in the list of bodies and formations involved in the territorial defence mission, although the vast

majority of structural units of this service are actually close to the military formations, have the appropriate material and technical base and necessary experience, such as rescue operations, as well as the personnel has special ranks.

5. The regulatory framework of Ukraine on territorial defence preparation and conduct does not provide the clear task list for the bodies and formations involved in the implementation of its missions (especially regarding the Ministry of Internal Affairs of Ukraine and the State Emergency Service of Ukraine). The list of these tasks is subject to the legislative definition for the territorial defence of Ukraine in general and to the adjustment for each of their practical performers separately, including for the Ministry of Internal Affairs of Ukraine and the SES of Ukraine.

6. In Ukraine, the regulatory framework for the organization of material and technical support for territorial defence bodies and units is absent. Moreover, in the course of territorial defence preparation and conduct, a significant part of transport and road support functions should be performed by the relevant ministries and departments of Ukraine, with which the Ministry of Internal Affairs of Ukraine will have to interact in a special period. Considering that the basis of territorial defence is the organization of close interaction between military formations, law enforcement bodies, other State bodies and local self-government bodies, branches of the national economy in the course of a wide range of measures within their competence, this implies a clear coordination of actions with them by the MIA of Ukraine in accordance with the tasks, place, time and way of action, forces and means involved. Management of forces and means of logistics must be carried out in a single system ensuring territorial defence, in close cooperation with local authorities, as well as with the SSU, the MIA of Ukraine and other units involved in territorial defence. However, it should be noted that in Ukraine the legal framework for financing measures of territorial defence of local significance is also absent as the relevant Draft Law of Ukraine no. 8132 of March 15, 2018 on this issue has not been adopted by the Verkhovna Rada of Ukraine as of today.

7. Due to the lack of generally accepted views on the organization and support of interaction and coordination between ministries and departments on conducting special operations, as well as fundamental theoretical developments on these issues, special operational plans for conducting special operations in accordance with the territorial defence mission (including combating aggressor's subversion and reconnaissance forces,

and anti-State illegal armed groups on its own territory) should be developed, together with the Ministry of Defence of Ukraine, as part of the special operational plans of the MIA of Ukraine by type of «Hrim [Thunder],» «Syrena [Siren],» «Zaruchnyk [Hostage],» etc.; accordingly, the common system for managing these operations should be formed.

8. In order to carry out the basic training of civilian specialists on defence and mobilization activities, referred to as the concept of territorial defence, relevant agreements between the educational institutions of the MIA of Ukraine and educational institutions of other bodies and services, involved in the territorial defence mission, should be concluded to organize joint training, using the training base of military educational institutions and educational institutions of the MIA, and to develop uniform training programs for such specialists.

9. It is urgent to improve the unified communications systems, especially the protected ones, and a uniform system of continuous communication for command and control between the Ministry of Internal Affairs of Ukraine and the MIA's bodies and territorial defence local units. Therefore, communication systems on tactical command and control operational levels should be unified, as well as the problem of limited staffing resources for organizing communication (their incompatibility or overall absence) should be eliminated.

10. The experience of Poland is noteworthy with regard to forming territorial defence forces (TDF) that conduct not only traditional anti-crisis response, disaster management and search and rescue operations, but also joint activities in cooperation with the regular troops of the Armed Forces of the Republic of Poland, independent anti-diversion and anti-missile operations, as well as other non-traditional operations, reception of Allied Forces of NATO member states in certain areas of their deployment, strengthening and protection of non-military structures, favourable information field establishment and counter-propaganda.

11. The personnel recruitment territorial defence units should be carried out on a mixed basis, involving both volunteers willing to serve in the territorial defence forces and persons selected specially by the military commissariats with participation of the relevant bodies of the SSU and the MIA of Ukraine. The positive experience of the Baltic States (in particular, Estonia) should be considered in staffing territorial defence units, such as giving preference to the members of military-patriotic organizations, aimed at ensuring homeland protection, which will greatly enhance the effective performance.

12. At the legislative level, the system of financial and material incentives for persons involved in territorial defence units requires improvement, taking into account the positive international experience. For example, in the Republic of Poland, each person liable for military service, trained in territorial defence forces, receives more than extra 160 euros per month, and in some other countries, such persons are granted additional leave or an increase in annual paid leave. This extra financing is carried out both from the State budget and from local budgets of the zones and districts of territorial defence.

13. The regular officers, who are in the military service should be assigned to command and control of territorial defence units, educated relevantly and skilful in practice of the troops (forces) in modern conditions, specificities of territorial defence activities, and capable to coordinate, as soon as possible, these units and get them to ready to perform tasks.

14. To reform radically the MIA's bodies, to increase their material and financial support, training, practicing and preparedness to mission performance (including in the context of hybrid threads), to ensure the restoration of public faith in these bodies by closer interaction with citizens and local communities. Due to the MIA reformation, one of its main objectives should be fulfilled, that is, formation of a modern law enforcement system, which will ensure the integrity and stability of the State, protection against new threats and the ability to respond to the latest challenges, safety of its citizens and provision of high-quality law enforcement services within the limits stipulated by law.

15. To enhance responsibility of the MIA's public officials for corruption and unlawful actions to prevent transformation of these bodies to punitive structures relating to society, while for corruption and crimes in the security and defence sector of Ukraine, to provide for responsibility as for betrayal of the Motherland.

SUMMARY

The article studies the issues of organizational and legal support of the MIA regarding preparation and conduct of the territorial defense mission under hybrid threats. The author reveals that in the modern world «hybrid warfare» and «hybrid threats» are considered as the new types of global confrontation with corresponding specificities. The study determines that the Ukrainian legislation provides no definitions of these phenomena; however, these terms are used in official documents of our State.

The article proves that an integral part of the State measures, implemented within the framework of national security and defence of Ukraine and directly aimed at protecting Ukraine's national interests from external and internal threats, is measures for preparation and conduct of territorial defence. The author emphasises that the most important area of State's defence capability support is the development of fundamentally new approaches to territorial defence organization and the improvement of the system of management of forces and means involved in the territorial defence mission. The author argues that territorial defence issues should be decided on the basis of a systematic approach at the interagency level within the framework of a single State program.

The study states that one of the key factors in ensuring Ukraine's security and defence under hybrid threats is the preparedness of forces and means of the bodies of the Ministry of Internal Affairs, to the territorial defence mission. The analysis proves that under these conditions, the effectiveness of the territorial defence mission in the sphere of public safety and civil protection of Ukraine depends on many external and internal factors in the activities of the MIA's authorised bodies. In conclusions of the article, the author presents propositions and recommendations on the issues of enhancing preparedness of the forces and means of the MIA of Ukraine to the territorial defence mission under hybrid threats.

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CHAPTER 7
ACTUALIZATION OF CERTAIN CURRENT COURSES OF FIGHTING ORGANIZED CRIME

Svyrydiuk N. P.

INTRODUCTION

Combat crime is always at leading place in law enforcement activity. However, the relevance of such activities' adequacy is a fairly objective understanding of crime determination, and especially in organized forms of their actings.

Great attention has been paid to the specific scientific and applied crime issues in the economy of Ukraine as an independent state in recent years. They are considered in dissertation researches, monographs, relevant sections of textbooks and manuals, scientific articles. In different years, they became the monographic and dissertation researches' subject of many famous scientists.

Crime prevention issues were studied in the scientists' researches of: O.M. Bandurka, V.O. Glushkov, V.V. Golina, V.K. Gryshchuk, N.O. Hutorova, L.M. Davidenko, O.M. Dzhuzhi, A.E. Zhalinsky, A.P. Zakalyuk, V.M. Kutsa, A.M. Litvak, M.I. Melnyk, P.P. Mihailenko, M.I. Panov, V.I. Shakun and other specialists. In numerous works on Criminal law and Criminology, general issues of the crime prevention theory, prevention of certain types of crime were considered. At the same time, nowadays, crime prevention activities require fundamentally new approaches aimed at ensuring a reliable protection of legal rights and interests of person, society and state.

7.1. Evaluation of organized crime risks

The problem of estimating and accounting for economic risk now in market relations acquires an independent theoretical and applied value as an important component of management theory and practice.

Most managerial decisions are taken at risk, due to a number of factors – lack of complete information, presence of opposing tendencies, elements of chance, variability of goals, etc. In these conditions, there is uncertainty in obtaining the expected final result, increasing the likelihood

of additional costs and losses. Therefore, in economic theory, such systemic characteristics of economic decisions as maneuverability, flexibility, stability, adaptability, reliability, which are closely related to economic risk category, are increasingly used.

As the experience of social production's development shows, risk is a characteristic phenomenon of market economy and belongs to the fundamental concepts of economic theory and management. Therefore, one of the main lines of economic theory development in the second half of the 20th century was the study of risk, construction and improvement of adequate tools for its analysis, modeling, forecasting, and also taking into account managerial decisions'process.

It is clear that the growing role of risk and its significance in modern society require deep and comprehensive research in this area. Even in the abundance of scientific researches devoted to the essence and conceptual apparatus of risk, methods of its analysis, and increasing their flow, unfortunately, it is to be noted that there is still insufficient scientific and methodological work of a large range of risk problems. The researches and development results carried out in this area do not answer to many urgent theoretical and methodological and practical issues and may not always serve as an effective tool for addressing risk assessment and development of ways to prevent or mitigate the negative consequences of its occurrence[1].

New features of the risks potential dangers in society are that they pose a threat to human life as a whole. At the same time, the distinctive feature of these threats is the lack of borders and impossibility of identifying their perpetrators, and therefore these risks' consequences and threats can not be unequivocally foreseen, calculated, compensated for both human beings and environment.

The specific danger, that is the subject of our analysis, is organized crime, and growing role and significance of risk in modern society, it is necessary to introduce risk– analysis for organized crime as the most dangerous form of criminal activity.

Organized crime is a significant problem for all countries. This is not only a problem in national law enforcement activities that undermines state security but also has the potential to influence other important human security sectors, whether social, political, economic or environmental[2]. It

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[1] *Proty`diya vidmy`vannyu koshtiv: ry`zy`k oriyentovany`j pidxid / [Kory`stin O.Ye., Korzhenivs`ky`j Ya.V.]; navch. posib. za zag. red. O. Ye. Kory`stina. – K.: KNT, 2013.–172s.* [Anti-Money Laundering: Risk Oriented Approach / [Korystin O.Ye., Korzhenivsky Ya.V.] (in Ukrainian)

[2] The evolving challenge of transnational organized crime // Trends in Crime and Justice, 2005 (UNODC/UNICRI). – P. 25–54.

threatens security, stability and development – at personal level, local communities' and at the national (and, of course, transnational) levels.

Many aspects of organized crime have a global reach, for example, drugs and human trafficking, fraud and money laundering. But this activity also has a significant impact on some countries, as well as local communities where victims and criminals appear, and where «goods» are produced, transported, received, sold or used.

The complexity of organized crime is also growing and changing along with new opportunities for spreading crime, which is often promoted by processes of improvement in society (for example, globalization and new technological advances). New routes are used, new methods of work are regularly identified and implemented. The criminal activity is more flexible and dynamic, the general tendency is constant improvement of organized crime. And, knowing how more complex is organized crime, due to the hidden nature of most of its activities, illegal activity becomes less vulnerable.

But understanding the scale and consequences of organized crime, as well as the need to identify and implement effective strategies to minimize such criminal activity, national response is absolutely necessary. This is the main task for all countries. In certain weak jurisdictions, there is a lack of information; in others, which is rather widespread, there is an excess of information, but it is disorganized and inaccessible or not «connected» with some persons, agencies and institutions, which for objective reasons do not have the opportunity to exchange it, conditionally – the situation «we know what we know, and what we do not know?». Most countries, as a rule, have several agencies responsible for preventing and investigating various aspects of organized crime. The organization of these measures can be problematic to avoid duplication and ensure maximum coordination, impact and savings.

The implementation of the national risk assessment process for organized crime will provide a better and deeper understanding of the problems and working methods used by criminals over a period of time. It is important to understand the general picture of the threats and harm associated with organized crime, its impact (at the international, national and local levels) and how it changes and develops. It is not less important that this will be an adequate response to organized crime, identifying priority areas for law enforcement activities. It will also enable the development and implementation of more effective and coordinated strategies that will be more effective in preventing and securing the

investigation of organized crime. This will allow the state and its law enforcement agencies to take the top step towards solving organized crime problem, with a greater probability to provide an appropriate level of security in society and increase public confidence.

In general, assessing the usefulness of developing an assessment of organized crime risks, it is appropriate to identify certain concomitant causes, among which:

– possibility of more effective protection of the state and its citizens from organized crime consequences;

– institutionalization of procedures by which information on organized crime can be more systematically collected, evaluated and published;

– is an important policy and management organizational tool for defining priorities and making resource allocation decisions;

– identification of more effective activities to prevent and prosecute;

– excellent monitoring tool;

– provides a foundation on the basis of which other information and intelligence tools can be built;

– important contribution to the achievement of a higher degree of transparency and providing a forum for discussion of involvement of stakeholders (business groups, community leaders, etc.) in process of effective counteraction to organized crime;

– providing a mechanism for promoting cooperation and interaction of interested public and private sector organizations.

Thus, implementation of national process for assessing the organized crime risks improves awareness, helps to make effective decisions, improves the use of limited government resources, and so on. A national risk assessment of organized crime is a process that helps to make a decision. This is a description of the threats and assessments of the current risks facing the country and arise in the future related to organized crime, identifying gaps in the current system of counteraction and identifying appropriate measures to avoid them, as well as developing management recommendations for identified threats[3].

In addition, the assessment of organized crime risks provides a better understanding of organized crime in the country, its specificity and possible future spread. This includes understanding the impact of organized crime within the state, which originates or is initiated from

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[3] Central Intelligence Agency, USA. URL: www.page2007.com/dni_2008.pdf () Europol; URL: www.europol.europa.eu/index.asp?page=publications&language=; Royal Canadian Mounted Police, Canada. URL: www.rcmp-grc.gc.ca/ es-ae/2007/enviro-scan-analyse-2007-eng.pdf; Serious Organized Crime Agency, UK. URL: www.soca.gov.uk/assessPublications/UKTA0809.html

others, as an external threat. It is covered the whole range of organized criminal activity, not only its special type. These are various criminal markets and sectors of organized crime, as well as membership and structure of criminal groups involved in such activities; on the use and interpretation of quantitative and qualitative data for description of organized crime, as well as for identifying threats to the country, assessing the risk degree they represent, and damage level they cause as of now and, possibly, in future. This is a «big picture» and a far-sighted system. Of course, it relies on information that is specified in the operating reports, but usually does not contain details about suspects. This is usually a strategic product, not tactical.

The primary significance of implementation of the system of organized crime risks assessment (hereinafter – SOCRA) is the subject difinition of SOCRA development and its evaluation. There are many options available. In some countries, this may be a special agency with such powers (for the collection and analysis of operational information), or an existing agency that can be legally identified and required by its legal status to carry out this work, taking into account its role in preventing or investigating organized crime. Among the suggestions it may also be the involvement of external agency other than traditional law enforcement agencies to carry out this work, for example, as independent agency or institution, but this is essentially a matter of national choice.

There are other key elements of SOCRA implementation, in particular, the necessary resources. Ideally, a small group team should handle a problem, consisting of a leader and two or three analysts or researchers. This group should have easy access to information and work in close cooperation with law enforcement agencies. Team members are predominantly trained in criminal analytics, but if not, then they should be objective persons, with a creative mind and critical thinking.

There is a potential need for training and not only for the managers and analysts of the working group. One part of the relevant risk assessment and management report needs to be covered by a relevant curriculum for law enforcement professionals with gaps in the current system of vocational training. This kind of training shows how to build SOCRA, and why it is a useful tool and as politicians, authorities and managers can get the effective outuput from national SOCRA.

The main reason for conducting a national assessment of organized crime is to provide valuable, timely and accurate information for politicians and law enforcement officials about the problem's nature and

extent and the way in which action is needed to make more informed decisions and effectively combat organized crime. This includes making decisions on priorities, identifying preventive measures and investigative capabilities, and allocating resources.

In some countries, the national assessment of organized crime risks is used by the government as initial organizational unit for identifying goals and allocating resources at the national level. This is an important element for the issue concept in law enforcement, as well as implication and importance of national assessment of organized crime risks.

In addition, national SOCRA is an extremely valuable tool for executives and law enforcement officials (and other public and private sector organizations) as it informs about recent trends and trends in the spread of organized crime. It also helps in choosing priorities and identifies more effective measures to implement effective mechanisms to combat organized crime. In some countries, this contributed to the development of the so-called «intelligence police», which recognized the denotation and importance of timely and accurate information on its analytical processing for an effective solution of organized crime issue.

7.2. Serious and Organised Crime Threat Assessment (SOCTA)

It is believed that threat assessment, including those related to organized crime, can be guided only by intuition and common sense. Perhaps, but it is quite logical to assume that intuition, as well as life experience, which is based on «common sense», are purely individual phenomena, and the «intuitive-understandable» conclusions made are subjective. Therefore, in order to ensure reliability of analysis results, ability to check or reproduce them, there is a need to formalize the rules of using those same intuitions and «common sense» to analyze the threats, that is, to create a certain methodology for such an analysis.

Why do you need reliable results of threat analysis– it is also understandable – to make correct administrative decisions to manage these risks in order to minimize their impact on the goal (in our case, to minimize the impact of organized crime on individuals, society, state, and environment).

Based on this conviction, the organized crime threats can and must be analyzed using both standard risk analysis techniques and specially designed tools specifically for assessing the organized crime threats.

The introduction of the EUROPOL methodology, SOCTA 2017, is a Eurointegration element in Ukraine and provides for its further

development and improvement on the basis of innovative methods of analysis and crime evaluation.

In 2010, the EU has developed a multi-year policy cycle for dealing with serious crimes and organized crime with a view to consistently addressing the most important criminal threats through effective cooperation between the relevant services of member– countries, EU institutions and bodies, as well as Third Parties and organizations. This approach was approved by the EU Council in December 2010.

The start of this EU policy cycle implementation was the SOCTA creation (Serious and Organized Crime Threat Assessment), in which Europol formulates analytical findings that can be transformed into political priorities, strategic objectives and operational plans of the EU. The connection is important between the conclusions of the SOCTA Assessment and the definition of the Council on the Counter-Terrorism objectives. The assessment provides direct information to those responsible for making policy decisions and the resolution of the most serious threats and risks in the EU.

In 2013, the first SOCTA analysis was published based on customer requirements (EU) and defined methodology. The SOCTA methodology was developed by Europol in conjunction with the SOCTA Consultative Group (consisting of representatives of the EU member states, EU institutions, the European Commission and the General Secretariat Council), as well as in accordance with the agreed requirements of the SOCTA customer and with the support of Third Countries and Organizations.

As a decision result of the Council, the methodology of SOCTA has been updated, revised and improved. During 2013-2015, the SOCTA Advisory Group reviewed the SOCTA methodology. The first update was proposed in 2014 and endorsed by the Standing Commission on Operational Interaction on International Security (COSI).

In 2015, the implementation of new customer requirements was carried out for the SOCTA 2017 preparation. Based on these contractor requirements, an updated methodology was prepared.

SOCTA is a transcript of the English Serious and Organized Crime Threat Assessment and defines the system and model for threats of organized crime and serious crimes assessment.

The main reason for the national assessment of the threats of organized crime and serious crimes is to provide valuable, timely and accurate information from politicians and leaders about the crime nature

and its extent, and adoption, on this basis, of more informed decisions on crime issue in general and organized crime, in particular. These are various criminal markets and sectors of organized crime, as well as the membership and structure of the organized criminal grouping.

This is the use and interpretation of quantitative and qualitative data to describe organized crime, as well as to identify and analyze the threats, the harm level they cause both now and, possibly, in the future.

SOCTA relies on information defined in the reports, but usually does not contain details about individual suspects, usually described as a «strategic» product, not «tactical»). The information provided should be based on criminal proceedings materials, operational and investigative cases, control proceedings and reference and analytical reports.

As a rule, SOCTA focuses on the national level. In addition, in many countries, SOCTA is developed at the regional, local, individual institutions for internal use, as well as on separate basis (for example, the impact of drug trafficking, cybercrime or corruption in the country is explored). These more specific assessments are extremely valuable when they form a single picture of the SOCTA national level.

Fig. 1. Concept Model of SOCTA[4]

[4]Europol. URL: www.europol.europa.eu/index.asp?page=publications&language=; Serious Organized Crime Agency, UK. URL: www.soca.gov.uk/assessPublications/UKTA0809.html

The conceptual model of SOCTA defines four separate components of the methodology: purpose, tools, analysis and prioritization, as well as results.

SOCTA focuses on three elements:

– Organized criminal groups (Criminal Groups)

– organized crime areas and serious crimes' committing (SOC Areas), zones and environment they are concerned and their manifestation factors (Environment – Environment).

7.3. Rationale for the concept of anti-criminal intelligence of law enforcement agencies in Ukraine

The joint efforts that have been made over these decades have led to successes in the criminal prosecution of organized crime groups, and some have hoped that the threat of organized crime will be overcome. As Steeer and Richards noted, «... prosecutors and investigators who were engaged in organized crime believed that if every person from especially dangerous criminals' list would be incarcerated, then only this one would paralyze organized crime and eliminate its corruption». It is slowly, but confidently, practitioners and theorists realized that organized crime was regenerative ... and that is why law enforcement agencies began to focus their efforts on sources of power and the influence of organizations ....”[5].

Thus, emphasis should be placed not on the individuals who are to be punished, but on the broader aspects. Law enforcement agencies should look wider – take care not only of specific offense, but also of criminal wider schemes. In 1983, Dintino and Martine pointed out that intelligence remains the only rational means of solving organized crime issue[6].

The use of intelligence also allows law enforcement agencies to obtain long-term benefits. «In order to obtain significant results, investigations should be part of a general strategy aimed not only at punishing some persons and enterprises; investigations should be based on informed understanding of organized crime issue that must be addressed, and must take into account the long-term effects of both a specific strategy and day-

[5] Stier, Edwin and Peter Richards (1986) "Strategic Decision Making in Organized Crime Control; The need for a Broadened Perspective," *Major Issues in Organized Crime Control.* Washington, DC: National Institute of Justice.

[6] Dintino, Justin and Frederick T– Martens. (1983) *Police Intelligence Systems in Crime Control.* Springfield, IL.

to-day operations on the implementation of this strategy»[7]. Thus, we must work not only for the sake of success today, but also for the purpose of long-term obtaining and preventing crime.

Intelligence products should give impetus to the fight against organized crime; but, unfortunately, this happens rarely. As a rule, efforts aimed at fighting organized crime are reported at operational-tactical level through the secret agents' using, informers and observers (physical and electronic).

All these activities are gathering of information, and many of intelligence officers consider data collection the most important thing. However, many such units operate without analysts or trained scouts capable of analyzing this important information. The information collected may be unofficially analyzed by scouts or prosecutors, but such informal analysts are not adequately trained on acceptable analytical methods that have been developed over the past few decades.

One of the main goals for which analytical intelligence information is used in operational investigations of cases related to organized crime is to identify incomes derived from criminal activity. Such a task requires an in-depth financial research and analysis. For example, bank records' analysis of enterprises controlled by organized criminals may reveal buildings, land, cars or other property that may be confiscated by law enforcement agencies, and may also detect other crimes such as concealment of income, money laundering, theft of funds, etc.

In response to organized crime strategic intelligence provides a long-term definition of objects and potential consequences of organized crime groups in the jurisdiction of law-enforcement agency. It can study the evolution (and devolution) of criminal groups, as well as the scope of their influence.

For future investigations, general strategic assessments are used to identify group members and illegal activities[8]. One of the challenges faced by counter-organized crime units in the 21-st century is the increase in the number of different criminal groups and syndicates. The efforts of law enforcement agencies to minimize the negative effects of these criminal groups are hampered by the lack of reliable information about their

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[7] Goldstock, Ronald (1986) "Operational Issues in Organized Crime Control" *Major Issues in Organized Crime Control.* Washington DC: National Institute of Justice.

[8] Peterson, Marilyn B. (1994) "Intelligence and Analysis within the Organized Crime Function" *Handbook of Organized Crime in the United States,* Robert J. Kelly, Ko-Lin Chin and Rufus Schatzberg, editors. Westport, CT: Greenwood Press.

members and activities. Therefore, the collection, systematization, analysis and compilation of such information will provide the intelligence unit with the main information for use in investigations.

The current criminogenic situation in Ukraine is a qualitatively new phenomenon both in terms of scale of criminal manifestations and in the degree of their devastating influence on the vital activity of society, the rights and freedoms of citizens. In recent years there has been a transformation of crime in our country, an increasing organized criminal groups quantity that have a strict hierarchical structure, use the latest technical means to ensure illegal activities, and counteract law enforcement. Organized criminal groups have turned into symbiosis of the shadow economy businessmen, armed groups serving them, and corrupt civil servants of different levels. It is the weakening of state control over the situation in the country, which allows criminologists to set their tone, dictate their rules of conduct, ideology, subculture, lobby for its legal, organizational and tactical decisions of legitimate power, and actively counteract law-enforcement structures. For the organization of criminal activity, they operate considerable financial resources, which are used, in particular, for bribing civil servants, law enforcement officers, attracting specialists from different sectors to create effective mechanisms, technologies, methods and schemes of committing crimes, etc. The situation is greatly worsened in connection with the intensification of aggressive manifestations of terrorism and extremism.

According to our belief, effective counteraction to crimes, especially its organized forms, is impossible without understanding of those processes that take place in criminal environment or vice versa creating the necessary conditions for documenting the facts of illegal activity, etc. In this regard, law enforcements face the need to find out the formation and existence provisions of criminal groups, their chosen mechanisms for committing crimes, role participation in this process of each party in the criminal group, the movement of shadow and certain legal financial flows that are the basis of these groups' existence or vice versa, the subject of their criminal interests, organized crime infrastructure functioning, etc. The organization of counteraction to their criminal activity requires extraction, analytical processing and use of intelligence information obtained in the course of conducting vowels and secret actions in order to timely prevent,

detect and neutralize real and potential threats to the national interests of Ukraine.

The situation is also actualized by the fact that today, in connection with the enactment of the new Criminal Procedure Code of Ukraine, operative-investigative activity of internal affairs bodies has been offensive.

The essence of the offensive, which consists in the necessity of the preventive nature of operational units'actions so that, even at the early stages of the commission of intentional crimes (preparation, attempt), actual data were received about the criminal intention of a person or group of persons, there was not allowed the exaggeration of previous criminal activity in disposal crime is actually ruined. Today, since the criminal proceedings' commencement, law enforcement operational units are denied the right to initiate measures aimed at establishing and exposing the perpetrators, but only acting within the scope of instructions of investigators and prosecutors. Thus, the essential arsenal of operative-investigative activities and methods remains virtually unnecessary. In addition, the current Law of Ukraine «On Operative-Investigative Activity» loses its relevance, linking the process of implementing the rights of operational units with the provisions of the Code of Criminal Procedure. We have to state that the operative-investigative activity theory has to be substantially rethought.

A comparative analysis of modern European and world practice shows that most developed countries go through a clear division of criminal procedure and activities for obtaining, extraction, analytical processing and forecasting of crime information, some crimes and those involved in them. It is precisely such activities that can be defined as anti-criminal intelligence.

The most developed network of expansion units exists in the US police, where each police unit has its own intelligence group, which, depending on its level, consists of information and analytical unit, group of operational personnel, group of special operations, experts group, operating undercover operatives' group, external and electronic surveillance groups, and logistics teams. The general purpose of the US intelligence service is to collect operational information that would ensure effective planning and implementation of anti-crime measures. This type of reconnaissance activity is called internal intelligence. Similar units were

created in French Police – the brigade of search and seizure. They take active measures to study and monitor the criminal element, penetrating into its environment. The same approach has special units' organization in Switzerland. The Hungarian police have a wealth of experience in using intelligence units in the fight against crime. It has units at its disposal of carefully constrained collaborators specially trained to work in criminal sphere. In turn, the German Criminal Police and the constitution guardianship also use «under cover» officers in the criminogenic sphere, mainly for grave and particularly serious crimes' solving.

On October 2, 2012, the Seimas of the Republic of Lithuania adopted the Law «On Criminal Investigation», which replaced the Law «On Operational and Investigative Activities». With its adoption and entry into force, the counteraction to crime in the Republic of Lithuania consists of two logical components: constant reconnaissance activities and criminal procedure.

Structurally, the Law of the Republic of Lithuania «On Criminal Investigation» consists of 24 articles:

1. Purpose of the Law;
2. Basic concepts of the Law;
3. Legal basis and principles of criminal intelligence;
4. Task of criminal intelligence;
5. Protection of the rights and freedoms of person during conducting criminal intelligence;
6. Rights of criminal intelligence entities;
7. Duties of criminal intelligence entities;
8. Grounds for criminal intelligence;
9. Receiving information from business entities providing electronic communications and/or services, the Central Bank of Lithuania, financial enterprises and credit institutions, as well as other legal entities;
10. Use of special means of hardware, secret inspection of postal items and documents, control of postal items and withdrawals, secret control of correspondence and other communications;
11. Secret penetration of person's dwelling, service and other premises, closed territory, vehicles;
12. Tasks performed by law enforcement agencies;
13. Imitation of criminal activity;
14. Controlled delivery;

15. Observation;
16. Assistance to persons of criminal intelligence;
17. Preparation of procedural documents used for secret/ cover-up in the course of engaging in engaged activities in relation to arrested persons;
18. Use of criminal intelligence information;
19. Financing of criminal intelligence;
20. Internal control;
21. Coordination of criminal intelligence and control of legality;
22. Government control;
23. Parliamentary control;
24. Enactment.

It should be noted that the current Law of Ukraine «On Intelligence Organs of Ukraine» does not include the law enforcement operational units to the subjects of intelligence activities. At the same time, in accordance with the Law of Ukraine «On Operational Investigative Activity», «operative-investigative activity is a system of active and secret search, reconnaissance and counter-intelligence activities carried out with the use of operative and operational-technical means.» This Law establishes an exhaustive list of state bodies that have been granted the right to carry out operative-investigative activities. In our opinion, a logical-semantic analysis of the provisions of the said Law, gives grounds for asserting that certain entities, in particular, internal affairs bodies, are granted the right to realize intelligence function.

In addition, Art. 1 of the Law of Ukraine «On Operative-Investigative Activity» stipulates that the tasks of operative-investigative activity are to search and fix facts on unlawful acts of individuals and groups, responsibility for which is provided for in the Criminal Code of Ukraine, intelligence and subversive activities of special services of foreign states and organizations in order to stop the offenses and in the interests of criminal justice, as well as obtain information in the interests of citizens, society and state security. Consequently, the legislator emphasizes the information nature of operative-investigative activity, which constitutes the essence of intelligence activities.

Intelligence operations of law enforcement operational units are carried out in the following areas – personal intelligence, agent intelligence, technical intelligence, analytical intelligence. In the system of the Ministry of Internal Affairs of Ukraine, intelligence functions are

performed by units of the Department of Criminal Investigation, Department of Operations and Operations Department. In addition, at the tactical level, reconnaissance activities are inherent in other law enforcement operational units in terms of work. At the same time, it is etymologically correct, in our opinion, to speak about «criminal» intelligence, which emphasizes its essence and direction in combating crime.

Based on the foregoing, we believe that today it is reasonable to develop a Concept of criminal intelligence of the bodies of internal affairs of Ukraine, which should structurally consist of:

1. General provisions (statement of problem);
2. Definition of basic concepts and categories (thesaurus of concept);
3. The state of legal regulation;
4. General characteristics of the object (crime) and development forecast;
5. Purpose, task and mechanism of the concept implementation;
6. The main ways and directions of the concept implementation;
7. Information, scientific, personnel, material and technical and financial support, etc.

The Concept purpose should be to determine the legal, organizational and tactical foundations of criminal intelligence of the bodies of internal affairs of Ukraine in order to protect individuals, state and society from crime. The elaboration of this Concept will ensure the legal basis creation for the operational units of the Ukrainian law enforcement agencies that carry out intelligence activities in the interests of criminal justice and will ensure that information security actors in Ukraine are informed of the intelligence necessary for prompt adoption of management decisions in the field of combating crime.

An obligatory element of this Concept is the drafting of the Law of Ukraine «On Criminal Investigation», introducing the relevant amendments and additions to the current legislation of Ukraine, in particular, the Criminal Procedure Code, the Laws of Ukraine «On Intelligence Authorities of Ukraine», «On the Militia», departmental normative acts, etc.

It should be emphasized that the bill should define the purpose and tasks of the criminal intelligence of law enforcements, grounds for its implementation, its legal basis and principles. It establishes the state

authorities that carry out criminal investigation, these units' authorities, order of providing intelligence information and protection of criminal intelligence information, specified bill, among other things, should contain an exhaustive list of reconnaissance measures (without disclosing the tactics of their conduct). It also defines the procedure for financing and logistics, social and legal guarantees of employees of bodies and units that carry out criminal investigations and persons conducive to its implementation, guarantees of observance of legality, especially the control over the implementation of criminal intelligence, and the peculiarities of control and supervision.

It is believed that the perception of the necessity of forming the Concept of criminal intelligence of the bodies of internal affairs of Ukraine, the drafting of the Law of Ukraine «On Criminal Investigation» has theoretical and practical components.

First, it will promote further scientific research in the field of combat crime and revision of paradigm of operational and investigative activities.

Secondly, it will turn off the offensive, pre-emptive nature of the operational units of the internal affairs bodies in the strategic and tactical directions of combating crime.

Thirdly, it will provide a comprehensive, continuous supply of intelligence information in order to fulfill the tasks of criminal justice.

We believe that the directions of this Concept are fully in line with the directions of reforming the bodies of internal affairs of Ukraine and their legal support, the European integration course of our state.

CONCLUSIONS

The value of criminal intelligence is difficult to overestimate. It is essential for the enforcement of the law enforcement function. We must further promote its «scientific» approach, realizing, of course, that it is art that requires great analytical abilities to convert raw data into a finished product, and this product is called intelligence information. To initiate an intelligence process, you must have a criminal predicate. Perhaps even more important is the recognition that the ability to set the level of a criminal threat is of utmost importance in order to ensure that there is neither excessive nor insufficient, but a well-considered response. It is the question of threat level that seems to have led to the use of intelligence and

misuse of intelligence in the history of the United States. The same reaction deserves not all criminal threats.

Accordingly, the establishment of real and fleeting or transitional threats is an art that can only be realized through careful analysis and long experience and deep knowledge.

SUMMARY

The problems of evaluation of organized crime risks as a defining and important organizational tool of politics and management are researched. It is noted that most managerial decisions are taken at risk, due to a number of factors, which are emphasized. Assessing the usefulness of developing an assessment of organized crime risks identified certain related causes. It was noted that in the implementation of the system of assessment of organized crime risks, the subject definition of development of SOCRA and the conduct of evaluation is of primary importance. The SOCTA model is evaluated. The opinion is grounded on the necessity of activating the intelligence function of law enforcement agencies in combating organized crime in Ukraine.

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CHAPTER 8
PROOF OF LEGALIZATION (LAUNDERING) OF PROCEEDS OF CRIME

Korystin O. Ye.

INTRODUCTION

Ukraine's integration into international legal and economic processes has determined the need to bring its national standards in line with international requirements in these areas. In the conditions of the growth of organized crime, especially in the economic sphere, the improvement of criminal-procedural theory, investigative, operative-search, and judicial practice in one of the key areas of activity of law-enforcement authorities – counteraction to legalization (laundering) of proceeds of crime is of paramount importance. The international experience of the fight in this direction convincingly shows that combating the legalization of criminal incomes is a prerequisite for stabilizing the country's economy, identifying and confiscating the money laundered.

The state of investigation of this category of crimes is significantly influenced by the high latency of this type of crime, the hidden mechanisms of legalization with the corresponding financial operations, the composition of criminal groups specializing in this crime with a differentiated division of roles, the lack of effective mechanisms for tracking "dirty" financial flows abroad, the most acute shortage skilled personnel of law enforcement authorities to fight these crimes, a sharp shortage of appropriate methodological support for the processes of detection and investigation of these crimes. And this is just a part of the problems, which significantly hinder the progress in detecting and disclosing the facts of money laundering.

8.1. Theoretical fundamentals of proof

In light of the adoption of a new Criminal Procedural Code of Ukraine in 2012, the criminal process underwent conceptual changes in the investigation process – the commencement of criminal proceedings, the order of conducting separate investigative (search) activities, secret

investigative (search) activities, investigator's powers, etc. These changes have become the driving force for a new round of scientific research of problems of proof in the criminal process.

The study of evidence and proof problems has always been a central theme in the science of the criminal process. General issues of criminal-procedural proof, from the viewpoint of criminal law and process, criminalistics, criminology, and operative-search activity were investigated in the writings by such domestic scientists as K. V. Antonov, V. P. Bakhin, V. I. Halahan, O. F. Dolzhenkov, V. K. Lysychenko, L. M. Loboiko, Ye. D. Lukianchykov, M. A. Pohoretskyi, M. V. Saltevskyi, L. D. Udalova, and others[1]. However, so far such fundamental issues remain debatable in the science of the criminal process as criminal-procedural knowledge and criminal-procedural proof, the establishment of the content of proof, the time of recognition of a certain object evidence, the importance of criminology in the process of proof, etc., which, in essence, determine the direction of criminal-procedural activity.

The analysis of scientific sources shows that in most cases, the authors understand the process of proof in the criminal process as activities that are carried out in the manner prescribed by law, aimed at the collection, verification, and evaluation of evidence and their procedural sources, as well as the formulation on this basis of certain theses and arguments for their justification[2]. According to Part 2 of Art. 91 of the CPC of Ukraine, the proof is to collect, verify, and assess evidence in order to establish circumstances relevant to criminal proceedings.

The pre-trial investigation and the system of norms governing this institution in civilized countries are based on two models of proving. The first model is clear and based on norms that clearly regulate the procedure for collecting and using evidence, provide explicitly the duty of investigative bodies to comprehensively, fully, and objectively examine the circumstances of the crime. Regardless of the clearness for the investigator (the presence (absence) of the fact of crime and the possibility of obtaining information that gives reason to suspect a person), the investigation under the rules of clear proof is aimed at collecting evidence for trial.

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[1] Kovalenko Ye. H. Kryminalnyi protses Ukrainy: Pidruchnyk. / Kovalenko Ye. H., Maliarenko V. T. – K.: Yurinkom Inter, 2004. – S. 325; Kostin M. I. Dokazuvannia i suchasna model kryminalnoho sudochynstva / M. I. Kostin // Ekonomika, finansy, pravo. – 2003. – № 4. – S. 36; Loboiko L. M. Kryminalno-protsesualne pravo. Kurs lektsii : [navch. posib.] / Loboiko L. M. – K. : Istyna, 2005. – S. 54; Udalova L. D. Kryminalnyi protses Ukrainy. Zahalna chastyna : [pidruch.] / L. D. Udalova. – K. : Kondor, 2005. – S. 65.

[2] Udalova L. D. Kryminalnyi protses Ukrainy. Zahalna chastyna : [pidruch.] / L. D. Udalova. – K. : Kondor, 2005. – S. 43.

The second model (France, Sweden, Belgium, Denmark) – a model of free proof, which is essentially a preparation for proving in court, and evidence gathering has been replaced by the search for information carriers that can become evidence only in court proceedings. The purpose of the pre-trial investigation is to determine the probability of establishing facts in court on the basis of data collected during the pre-trial investigation, which have no evidentiary value.

With the adoption of the CPC, the Ukrainian criminal proceeding approximated the second model of pre-trial investigation, in which the evidence gathered during the pre-trial investigation is not taken into account by the court during the trial, with the exception of individual cases. Article 3 of the CPC of Ukraine sets the task of ensuring a prompt, complete, and impartial investigation and judicial review, however, according to Part 1 of Art. 214, "the investigator, the prosecutor immediately, but not later than 24 hours after the submission of the application, notification of a criminal offense, is obliged to enter the relevant information into the Unified Register of Pre-trial Investigations and to launch an investigation." Consequently, it is necessary to comprehensively, fully, and impartially examine all the circumstances of the criminal proceedings set forth in any statement and notification of a criminal offense since any of them is subject to registration and investigation in accordance with the stated principles[3].

8.2. Substantiation of the circumstances to be proved

Part 1 of Article 91 of the CPC of Ukraine establishes circumstances to be proved in a criminal proceeding[4], the totality of which is generally considered to be a general subject of proof, the establishment of which is necessary for the resolution of applications and notices of crime, criminal proceedings in general, or litigation at the execution stage of the sentence, as well for the adoption of procedural preventive measures[5].

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[3] Zinchenko Ye. Sproba sumistyty v novomu kryminalnomu protsesualnomu zakoni rizni modeli dokazuvannia mozhe pokhytnuty pryntsypy sudochynstva [Elektronnyi resurs] / Ye. Zinchenko // Zakon i Biznes. – 2013. – Rezhym dostupu do resursu: http://liberal.in.ua/tochka-zoru/sproba-sumistiti-v-novomu-kriminalnomu-protsesualnomu-zakoni-rizni-modeli-dokazuvannya-mozhe-pochitnuti-printsipi-sudochinstva.html.

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In a separate criminal proceeding, the circumstances included in the facts to be proven are specified and individualized, that is, there is a specific fact to be proven, which is determined by the general notion of a crime and by the features of particular elements, set forth in one or another article of the Special Part of the Criminal Code of Ukraine. When investigating a particular fact in proof, both an unjustified restriction and an exorbitant expansion of its constituent elements are considered unacceptable. After all, by establishing the range of facts that must be known during the investigation of criminal proceedings, the law thereby prohibits perceiving circumstances not specified in Art. 91 of the CPC of Ukraine by criminal procedural means[6].

During the proof of legalization (laundering) of proceeds of crime, one should pay attention to a number of peculiarities.

First, the mandatory condition is to identify and prove the connection of the legalization (laundering) of proceeds of crime with the main criminal activity. An indication in the wording of Art. 209 of the CC of Ukraine of a criminal way of obtaining legalized proceeds sets for the investigative units a rather difficult task of proving this circumstance. This actually means that criminal proceedings initiated under these articles can be investigated only in conjunction with a criminal proceeding on the substantive (predicate) crime, which resulted in the receipt of money or other property.

The current criminal law of Ukraine provides that the legalization (laundering) of proceeds of crime is a commission of a financial operation or a transaction with funds or other property obtained as a result of the commission of a socially dangerous unlawful act preceding the legalization (laundering) of the proceeds, as well as the commission of actions, intended to conceal or disguise the illegal origin of such funds or other property or possession of them, rights to such funds or property, sources of their origin, location, movement, change in their form (conversion), and also the acquisition, possession or use of money or other property obtained as a result of the commission of a socially dangerous illicit act that preceded the money legalization (laundering).

A socially dangerous unlawful act preceding the money legalization (laundering) in accordance with this article is an act for which the CC of

[6] Ilchenko S. Yu. Lehalizatsiia (vidmyvannia) dokhodiv, oderzhanykh zlochynnym shliakhom: protsesualni problemy dosudovoho rozsliduvannia ta shliakhy yikh podolannia / S. Yu. Ilchenko // Kryminalne pravo Ukrainy. – 10/2006. – № 10. – S. 33.

Ukraine carries basic punishment in the form of imprisonment or a fine of more than three thousand tax-free minimum incomes, or an act committed outside of Ukraine if it is recognized as a socially dangerous unlawful act preceding the money legalization (laundering), under the criminal law of the state where it was committed, and is a crime under the Criminal Code of Ukraine and a consequence of which is illegally obtained income[7].

The above provisions became the cause of a scientific discussion. The analysis of scientific research on this issue and the practice of investigation of criminal proceedings give grounds for distinguishing the following points regarding the procedural importance of the fact of committing a predicate crime for bringing the perpetrators to justice and further investigating the legalization (laundering) of proceeds of crime.

In that way, the first opinion is that there is no need to take into account a predicate crime when bringing to liability for money legalization (laundering). In particular, O. O. Dudorov notes that for the application of Art. 209 of the CC of Ukraine, "awareness of the guilty of the fact that he commits actions with property acquired in a criminal way" is sufficient[8]. The same position is shared by other authors, noting that the current activity on the legalization of shadow incomes is sufficiently separated from criminal activities on extracting such income. In this regard, such an activity may be considered as an independent basis of responsibility irrespective of the responsibility for the offense, which is a means of extracting illegal income. Such a decision has also a preventive role of measures to fight the legalization of shadow incomes in relation to crimes that are the source of illegal income[9].

Another point of view is that the prosecution under Art. 209 of the CC of Ukraine is possible only in the presence of a court sentence, by which a person has been convicted for committing the so-called "substantive" crime, as a result of which the person has got a movable or immovable property, property and non-property rights[10]. Such a position is based on the interpretation of the constitutional principle of the presumption of

[7] Kryminalnyi kodeks Ukrainy vid 5 kvitnia 2001 r. // Vidomosti Verkhovnoi Rady Ukrainy. – 2001. – № 25-26. – St. 131.

[8] Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy vid 5 kvitnia 2001 roku / Za red. M. I. Melnyka, M. I. Khavroniuka. – Kyiv: Kanon, A.S.K., 2002. – S. 548.

[9] Gryaznye den'gi i zakon // Pravovye osnovy bor'by s legalizatsiey prestupnykh dokhodov / pod obshch. red. E. A. Abramova; sost. B. C. Ovchinskiy. – M: Arsis, 1994. – S. 11.

[10] Alyev V. M. Uholovnaia otvetstvennost za lehalyzatsyiu (otmыvanye) denezhnыkh sredstv yly ynoho ymushchestva, pryobretennыkh prestupnыm putem / V. M. Alyev, Y. L. Tretiakov // Rossyiskyi sledovatel. – 2002. – № 5. –S. 13.

innocence, formulated in Art. 63 of the Constitution and Art. 17 of the CPC of Ukraine. As you know, the main content of this guiding principle is that a person is considered to be innocent of a criminal offense and cannot be subjected to criminal prosecution until the guilt is proved and established by the judgement of conviction of the court, which has become legally valid.

That is why some scholars believe that the proceedings under Art. 209 of the CC of Ukraine must be commenced only subject to the entry into force of conviction for the predicate crime, that is, the "criminal way" of obtaining income must be finally legally recognized in each particular case. This, in particular, is noted by V. M. Popovych[11].

Thus, the supporters of this position believe that the prosecution for legalization (laundering) of proceeds of crime is impossible if there is no conviction in the so-called "substantive" crime, which is a source of income intended for laundering, as it is contrary to the principle of presumption of innocence. However, it is obvious that the requirement of a mandatory conviction for a substantive crime would greatly complicate the termination and investigation of "laundering" [12].

Other scholars believe that in order to prosecute on the fact of legalization, a suspicion of pre-trial investigation bodies in committing a predicate crime is sufficient[13]. Art. 276 of the CPC of Ukraine states that if there is sufficient evidence to suspect a person of a criminal offense, the investigator or prosecutor informs the person about the suspicion of committing a crime. That is, if there is sufficient evidence indicating that a crime has been committed by a certain person, the investigator or prosecutor makes a written notice of an action.

At first glance, the notice of an action may indicate that the investigation of the circumstance in proof in a particular criminal proceeding has been completed. But at the time of notice of suspicion, it is prematurely to assume that the task of criminal proceedings for a full investigation, defined in Art. 2 of the CPC of Ukraine, is done, as the arguments of the suspect have not yet been heard and checked, after that investigation of the circumstances of the criminal proceedings should be

[11] Popovych V. M. Ekonomichno-kryminolohichna teoriia detinizatsii ekonomiky: monohrafiia / V. M. Popovych. – Irpin: Akademiia DPA Ukrainy, 2001. – S. 397.

[12] Arkusha L. I. Lehalizatsiia (vidmyvannia) dokhodiv, oderzhanykh u rezultati orhanizovanoi zlochynnoi diialnosti: kharakterystyka, vyiavlennia, rozsliduvannia : monohrafiia / L. I. Arkusha. – Odesa : Yurydychna literatura, 2010. – S. 227.

[13] Naukovo-praktychnyi komentar do Kryminalnoho kodeksu Ukrainy / Pid zahalnoiu red. Potebenka M. O., Honcharenka V.H. – Kyiv: Forum. – 2001. – U 2-kh chastynakh. – Osoblyva chastyna. – S. 305-307.

continued and, therefore, the decision of the investigator or prosecutor regarding the guilt of the suspect cannot be final. Therefore, the fact of notice of suspicion does not mean that the study of the fact in proof is complete. In view of this, the statement by M. Ye. Shumylo, who observes that proving in the criminal proceedings ends with the verdict of the court, is fair and true. In the opinion of the said author, until the proof is completed, "knowledge of the existence of criminal law relations will be more or less probable, which does not preclude the formation of new knowledge about their absence" [14].

Researchers adhere to another opinion, arguing that a pre-trial investigation of the legalization (laundering) of proceeds of crime is justified when a predicate crime is already being investigated[15]. One of the important arguments in favour of this position is the fact that from the moment of the commission of the crime envisaged in Art. 209 of the CC of Ukraine, the entry into force of a sentence for a predicate crime can take a significant amount of time, which makes it impossible to trace and seize the proceeds of crime.

One of the mandatory conditions for the qualification of an act on the grounds of committing a crime under Art. 209 of the CC of Ukraine is a criminal way of obtaining income. In view of this, it is advisable, in parallel with the investigation of the substantive crime, to investigate the circumstances of the money laundering. A separate investigation of each of these proceedings is a complex and independent process, during which a lot of time is spent on conducting a large number of investigative (search) actions, complex forensic examinations, and execution of requests for legal aid outside the country.

The analysis of criminal proceedings on economic crimes gives grounds for concluding that the legalization of criminal proceeds is a necessary element of certain technologies of criminal enrichment. Organized criminal groups do not commit single crimes but aggregates (complexes) of various, though linked by one purpose, crimes, in which money laundering plays an important role in concealing, preservation from the seizure of illegally gained funds and property (income). Therefore, the investigation of crimes envisaged by Art. 209 of the CC of Ukraine, is

[14] Shumylo M. Ye. Reabilitatsiia v kryminalnomu protsesi Ukrainy: Monohrafiia / M. Ye. Shumylo. – Kharkiv: Arsis, 2001. – S. 135.

[15] Klepitskiy I. A. «Otmyvanie deneg» v sovremennom ugolovnom prave / I.A. Klepitskiy // Gosudarstvo i pravo. – № 8. – 2002. – S. 15.

inextricably linked with the investigation of predicate crimes, that is, should be complex. Technologies of criminal activity combine complexes of interrelated crimes against property, economic, official, “computer” crimes and acquire signs of systemic activity. One of the main factors in the existence of a complex of crimes as a system is the presence of such a connection among crimes that combines them into a single chain of criminal behaviour. This chain is characterized by the presence of substantive (predicate) and accompanying crimes that precede legalization. Moreover, the accompanying crimes act as a form, way or a necessary condition for committing a predicate crime[16]. Taking into account the nature of the links between the predicate and accompanying crimes, there are also technologies of criminal enrichment, in which money laundering is their ultimate goal (the final result).

Thus, in investigating criminal proceedings related to legalization, the main attention is paid to the proof of the commission of the substantive crime. This approach seems to be well-founded, as the study showed, about every second proceeding initiated on the basis of Art. 209 of the CC of Ukraine, signs of crimes are detected during the pre-trial investigation of the facts of committing the substantive crime. Therefore, we believe that bringing to responsibility simultaneously for a crime stipulated in Art. 209 of the CC and the so-called substantive one, which is the source of obtaining criminal incomes, not only does not contradict the principle of presumption of innocence but also promotes the complete and timely establishment of all circumstances of the crime committed. This is explained, firstly, by the fact that Art. 209 of the CC of Ukraine is about the acquisition of rights to income obtained from the commission of a crime that preceded the money legalization (laundering), while in no way it is about the characterization of the person, who legalizes shadow revenues (that is, the person trying to carry out transactions with these incomes is not called “guilty”); secondly, from the criminalistics point of view, the investigation of crimes that are united by a common criminal intention and are in a single criminal chain, as a general rule, should be pursued within the framework of a single criminal proceeding (if there are no grounds for the allocation of criminal proceedings). After all, these acts have a common mechanism of committing and investigative picture, which

[16] Vyiavlennia, rozkryttia ta rozsliduvannia lehalizatsii (vidmyvannia) dokhodiv, oderzhanykh zlochynnym shliakhom (st. 209 KK Ukrainy): naukovo-praktychnyi posibnyk / Yu. M. Domin, O. Ye. Korystin, I. Ye. Mezentseva, S. S. Cherniavskyi. – K.: Natsionalna akademiia prokuratury Ukrainy, 2009. – S. 30.

predetermines the formation of evidence that can establish both the circumstances and the criminal receiving of criminal incomes, and the ways of their legalization. In any case, a pre-trial investigation into the facts of the said crimes (the substantive one, which is a source of shadow revenues, and the accompanying one related to the attempt to legalize them) is usually more qualitative and complete. On the contrary, if one expects the conviction of the substantive crime to be imposed and enforced, then a number of traces of the crime and other evidence, which confirms the fact of money laundering, are objectively lost over time.

8.3. Proof of predicate crime and a list of circumstances to be proved

The second important element that determines the success of proving legalization (laundering) of proceeds of crime is the need to prove the criminal nature of a crime committed before another (substantive) crime. The law obliges to establish the fact that a person receives income in a criminal way. In other words, the fact in proof of legalization (laundering) of proceeds of crime includes circumstances indicating the existence of the purpose of committing legalization – concealing or disguising the illegal origin of funds or other property or possession of them, rights to such funds or property, sources of their origin, location, movement, change of their shape (conversion). More often, when the suspect is convicted, investigators pay attention only to fixing the very fact of the alienation of property acquired in a criminal way, without specifying the circumstances indicating the intention to grant it legal status.

Legalization (laundering) of proceeds of crime includes any actions connected with the commission of a financial transaction or a transaction with assets obtained as a result of committing a crime. Herewith, attention should be paid to the fact that in order to decide on the existence of a crime, provided for in Art. 209 of the CC of Ukraine, it is necessary to prove that a person performs the specified financial transactions in order to provide the lawful appearance of possession of the said assets.

The FATF recommends that the intention and awareness necessary to prove money laundering as a crime comply with the standards of the Vienna Convention and the Palermo Convention, which provide for the establishment of the subjective part of the crime based on the objective factual circumstances of the case. Various types of evidence arising from the objective factual circumstances of the criminal proceedings may be

used to conclude that there is a purpose for money laundering. These types of evidence can prove the intention of money laundering on the basis of actual circumstances: time, place, method, and circumstances of money laundering.

Thus, along with the circumstances envisaged in Part 1 of Art. 91 of the CPC of Ukraine, in combination with all other features of the components of crimes committed prior to the commission of the crime envisaged by Art. 209 of the CC of Ukraine and, taking into account the peculiarities of the criminal-law and forensic characterization of the legalization (laundering) of proceeds of crime, the list of circumstances to be proved in the investigation of the category of criminal proceedings under review can be divided into the following groups:

I. Circumstances belonging to the event of legalization of criminal proceeds:

1. The fact of legalization, that is, the commission of at least one of the acts prescribed by the disposition of Art. 209 of the CC of Ukraine.

2. The subject of legalization. Among the circumstances that belong to the crime, it is very important to establish the subject of a criminal offense. Depending on the subject of legalization – funds or other property – the process of proof has its own characteristics; therefore, the following are to be proved 1) the character (physical nature) of the subject of legalization (money, securities, property rights, other property); 2) the size, value, time of receipt, location of property or legalized funds.

3. Method (technological scheme) of legalization as a concrete reflection of one of the acts envisaged in the disposition of Art. 209 of the CC of Ukraine: 1) the circumstances of the commission of a financial transaction or other agreement, as well as the use of funds or property in business activities; 2) the movement of banking operations used by the offender (how were transactions from the bank of the sender to the bank of the recipient conducted, how it was recorded); 3) the type of financial and economic activity carried out by the organization or entrepreneur, in which the funds were sent; 4) the amount, frequency, periodicity of each financial transaction separately and all in aggregate; 5) the way of receipt of income in possession or disposal of the accused; 6) the method of providing the lawful status to illegally gained funds; 7) the nature of the transactions entered into, where, when, who participated as a party and on what conditions; 8) where, when, by whom, and what exactly financial

legalization transactions were made, which bank accounts were used, whether there was a transfer of cash abroad; 9) where, when, in what manner, and on what terms the transfer of property was carried out for legalization; 10) the procedure for execution of financial transactions and how they were reflected in the initial accounting documents and accounting records; 11) the traces remaining in the documents concerning the concrete actions of the subjects of legalization; 12) the nature of violation by banks of the relevant rules of the organization of production and commercial activities, accounting and reporting of financial and business operations, calculations, etc.

4. Source of origin of funds or other property that is legalized: 1) the nature of a socially dangerous unlawful act, which resulted in obtaining criminal proceeds that are legalized; 2) the presence (absence) in relation to the predicate crime of initiated criminal proceedings, the conviction, the decisions or orders of the court to release from criminal liability, the closure of criminal proceedings for non-rehabilitating grounds; 3) the presence of causal-and-effect relations between the primary (substantive, predicate) crime and legalization; 4) the way of receipt of criminal proceeds; 5) the circumstances in which the proceeds of crime were transferred to the possession or disposal of the accused; 6) documentary sources confirming the facts of carrying out illegal operations and the transfer of money and property, etc.

5. The situation (time, period, place) of legalization: 1) the time of each financial operation or the conclusion of a deed on the legalization of criminal proceeds, during which such criminal actions were committed; 2) the time of the occurrence of property rights for movable and immovable property, which was the subject of legalization; 3) the location of the business entity involved in the legalization; 4) the situation prevailing at a particular enterprise (organization, institution, establishment), which was involved in legalization; 5) the content of legal acts regulating the activities of both the enterprise as a whole and its individual officials; 6) state of control over doubtful financial transactions, internal or obligatory financial monitoring; 7) the legal status of a legal entity involved in legalization, if it is a fictitious enterprise, then on whose name it is registered; 8) observance of the requirements of the current legislation on the registration of business entities; 9) document circulation, the procedure for its registration and compliance with the requirements of

the current legislation; 10) a circle of business entities, with which the enterprise (institution) involved in the legalization had a contractual relationship; 11) establishment of the location of enterprises, institutions, and organizations used by the offender for laundering, including banks, offshore companies, enterprises specially created for legalization.

II. Circumstances proving the guilt of the accused and the grounds for legalization (laundering) of the proceeds of crime by other persons: 1) the fact of awareness of the accused of the unlawful source (nature) of the receipt of income in possession; 2) sources and level of awareness (informedness) of the person, who concluded any transactions or financial operations, about the circumstances of the criminal way of obtaining legalized funds or property, the time of receipt of such information (before or after legalization); 3) information about the owner of the property or funds legalized, the nature of the owner's relations with the direct executor of legalization; 4) analysis of objective circumstances of the commission of a crime (violation of existing instructions and rules of financial transactions, deliberate conclusion of fictitious agreements, obtaining unjustified rewards for actions committed); 5) circumstances, confirming the presence of the purpose of the accused, which is to provide the lawful character of the acquisition, possession or use of funds or other property obtained as a result of a crime (legal origin); 6) the scope of powers of officials regarding the possibilities of conducting financial operations or concluding deeds; 7) the legal capacity of the person who entered into transactions or made financial operations with money of criminal origin; 8) the circle of acquaintances of persons who are suspected of committing legalization; 9) circumstances influencing the degree and nature of the responsibility of each of the accomplices.

III. Type, size, description of proceeds subject to legalization (laundering): 1) losses incurred – first of all, the amount of legalized funds or the value of legalized property; 2) character (physical nature) of the subject of legalization (money, real estate, securities, property rights, other property); 3) the amount, value, time of receipt, the location of legalizing property or funds.

IV. Circumstances characterizing the person accused of legalization of criminal proceeds: 1) age, sex, level of education, professional, business, and moral qualities of persons directly engaged in legalization; 2) determining the way of life of the suspect (inconsistency of the living

conditions with prosperity, obvious inconsistency of personal incomes with expenses (acquisition of real estate, and other arrangements in amounts that are significantly higher than official income)).

V. Circumstances that exclude the criminality of the act and punishment for actions committed, in particular, the receipt of funds from legalization by committing crimes, the presence of physical or mental coercion by the owner of the property acquired in a criminal manner, that is, the lack of a sign of voluntary legalization.

VI. Circumstances that confirm that the proceeds of crime are subject to special confiscation: 1) the sphere (directions) of the use of legalized funds or other property, that is, the final result of legalization; 2) the location of legalized funds or property (in case of being abroad, the possibility of their return to the territory of Ukraine).

VII. Other circumstances, based on the peculiarities of the investigated criminal proceedings. Circumstances that mitigate or aggravate the responsibility.

In addition, not only the admissibility of the fact that funds are illegally obtained but also the desire of the accused to legalize them are to be proved. From the standpoint of criminal law, the person who has an indirect relation to the origin of money or property that this person manipulates is subject to responsibility for legalization. That is, along with the fact of laundering such profits, the investigator investigates separate episodes of criminal activity (primary crimes), during which such profits were received. However, the following specifics should be pointed out. It is known that in order to investigate and prove the person's guilt in the commission of legalization, as well as the involvement of specific individuals, the investigator must prove that the guilty person was aware of the fact that the profits legalized are received as a result of another crime. That is, along with the need to prove a number of crimes, proving the intentions of the person also serves as an important link in the crime investigation[17].

8.4. Means of proof

Establishing the circumstances to be proved during the pre-trial investigation of the legalization of criminal incomes is possible only with

[17] Holovina V. P. Osnovy metodyky rozsliduvannia lehalizatsii (vidmyvannia) hroshovykh koshtiv, zdobutykh zlochynnym shliakhom, z vykorystanniam kredytno-bankivskoi systemy: dys. kand. yur. nauk: 12.00.09 / Holovina Valeriia Petrivna – Kyiv, 2004. – S. 142.

the comprehensive application of means of proof. Meanwhile, the analysis of scientific sources provides grounds for concluding that in the theory of criminal procedure as to the means of proof, there are two main points of view.

Representatives of the first point of view, based on a narrow understanding of the means of proof, attribute only evidence to them[18]. As a follower of this viewpoint, L. D. Udalova notes: "it is incorrect to determine the means of proof simultaneously as the unity of evidence and the ways of obtaining it, and to include methods in the essence of means." When substantiating her position, she states that "investigative action as a combination of actions envisaged by law cannot be a means or method for assessing evidence or substantiating the conclusions of the investigation authorities and the court." Therefore, the means of proof, in her opinion, are not investigative actions as a set of actions through which evidence is collected and verified, and not a form of obtaining evidence, but the evidence itself[19]. Although in another work, L. D. Udalova defines examination precisely as a means of proof[20].

Representatives of the second viewpoint include in this concept means of proof and evidence, and ways of obtaining them – procedural and, above all, investigative actions. Thus, F. N. Fatkullin points out that it is necessary to understand the means of procedural proof as the concrete actual data used to establish the investigated circumstances of the case, the sources of these data and the methods for their receipt, verification, and use. Assuming under the methods of obtaining and using judicial evidence those actions prescribed by law, by means of which the investigating authorities, the prosecutor's office, and the court collect, verify, and evaluate the factual data and their sources, and also substantiate the conclusions in the case, this author describes the methods as one of the means of proof[21]. M. P. Kuznietsov and V. A. Paniushkin believe that the

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[18] Strogovich M. S. Kurs sovetskogo ugolovnogo protsessa / M. S. Strogovich. – M. : Nauka, 1970. – T. 2. – S. 287; El'kind P. S. Tseli i sredstva ikh dostizheniya v sovetskom ugolovno-protsessual'nom prave / El'kind P. S. – L. : Izd-vo LGU, 1976. – S. 60.

[19] UdalovaL. D. Teoretychni zasady otrymannia verbalnoi informatsii u kryminalnomu protsesi Ukrainy : dys... doktora yuryd. nauk : 12.00.09 / Larysa Davydivna Udalova. – K., 2006. – S. 252-254.

[20] Udalova L. D. Dopyt yak zasib protsesualnoho dokazuvannia na dosudovomu slidstvi / L. D. Udalova // Problemy pravoznavstva ta pravookhoronnoi diialnosti : [zb. nauk. prats]. – Donetsk, 2002. – №4. – S. 123-126.

[21] Fatkulin F. N. Obshchie problemy protsessual'nogo dokazyvaniya / F. N. Fatkulin. — Kazan' : izd-vo Kazan. un-ta, 1976. – S. 93.

means of procedural proof, in addition to evidence, include methods for obtaining them[22].

Followers of this opinion characterize investigative and judicial actions as a means of obtaining evidence from the sources specified in the law[23] as procedural means for obtaining evidentiary information in criminal proceedings[24], as the main means of gathering evidence[25], as a means of proof[26].

The second viewpoint is most grounded, its representatives understand the procedural means of proof broadly. This point of view has not only theoretical but also practical value[27].

According to the current CPC of Ukraine, the burden of proof is entrusted to the investigator, prosecutor, and also the officer of the operational unit, who, when performing the investigator's instructions, exercises his powers. Thus, in particular, Part 2 of Art. 93 of the CPC of Ukraine provides for methods of gathering evidence, one of which is to conduct investigative (search) actions. At the same time, A. R. Bielkin notes that when speaking of the gathering of evidence, it makes sense to ask the question of exactly how the evidence gathered acquires the status of evidence[28]. Here one should agree with the correct position of M. A. Pohoretskyi, who argues that before the beginning of the criminal-procedural activity, there is no evidence, and when the crime is committed, traces, information, etc. about a criminal offense are formed. Therefore, they collect, check, evaluate not evidence but information, traces, objects,

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[22] Kuznetsov N. P. O nekotorykh ponyatiyakh ugolovno-protsessual'nogo dokazyvaniya i razvitii ego protsessual'noy formy / N. P. Kuznetsov, V. A. Panyushkin // Razvitie i sovershenstvovanie ugolovno-protsessual'noy formy. – Voronezh : [B. i.], 1979. – S.115.

[23] Serdyukov P. P. Dokazatel'stva v stadii vozbuzhdeniya ugolovnogo dela : uchebnoe posobie / P. P. Serdyukov. – Irkutsk : IrGU,1981. – S. 81; Karneeva L. M. Istochniki dokazatel'stv po sovetskomu i vengerskomu zakonodatel'stvu / L. M. Karneeva, I. Kertes. – M. : Yurid. lit. ; Budapesht : Kezgazdashagi esh yogi, 1985. – S. 15.

[24] Porubov N. I. Dopros v sovetskom ugolovnom sudoproizvodstve / Porubov N. I. . – Mn. : Vysheyshaya shkola, 1973. – S. 10; Solov'ev A. B. Ispol'zovanie dokazatel'stv pri doprose na predvaritel'nom sledstvii / Solov'ev A. B. . – M. : Yurlitinform, 2001. – S. 4.

[25] Stakhivskyi S. M. Slidchi dii yak osnovni zasoby zbyrannia dokaziv : nauk.-prakt. posibnyk / S. M. Stakhivskyi. – K. : Atika, 2009. – S. 32.

[26] Trusov A. I. Sudebnoe dokazyvanie v svete idey kibernetiki / A. I. Trusov // Voprosy kibernetiki i pravo. – M. : [B. i.], 1967. – S. 25.

[27] Skrypa Ye. V. Slidchi dii yak osnovni zasoby otrymannia dokaziv u kryminalnykh spravakh pro nezakonnu lehalizatsiiu avtotransportu / Ye. V. Skrypa // Borotba z orhanizovanoiu zlochynnistiu i koruptsiieiu (teoriia i praktyka) : nauk.-prakt. zhurnal ; Mizhvid. nauk.-dosl. tsentr z problem borotby z orh. zloch. pry RNBO Ukrainy. – 2010. № 22. – S. 296.

[28] Belkin A. R. UPK RF: nuzhny li peremeny: monografiya / A. R. Belkin. – M.: Norma: NITs INFRA, 2013. – S. 277.

facts of the material world, which may transform into evidence and may not achieve such a status[29].

At the same time, as V. D. Bernaz correctly noted, in order to gather what later may be evidence, it is first of all necessary to identify, find, for example, persons who can bear evidence, and only after that to conduct with them investigative (search) and other actions for the purpose of gathering factual information. Therefore, the structure of proving, which is formulated in the CPC of Ukraine, does not take into account such an essential aspect of the investigative activity as the work on detecting traces, objects with signs of crime, information about the crime[30].

Proving the circumstances of a criminal offense in general is to develop the most effective techniques, tools, methods, forms of search and detection (extraction), verification, and evaluation of factual data and their sources. Further, such factual information and its sources, at their procedural registration and consolidation, verification and evaluation, can be recognized as evidence in criminal proceedings. Proving the circumstances of the crime, in the opinion of V. D. Bernaz, structurally includes the following elements: analysis of primary information; data entry to the URPI; producing versions and determining directions of investigation and corresponding complexes of procedural actions; detecting, fixing, collecting, extracting, verifying, assessing, and consolidating factual information and formulating conclusions about circumstances relevant to criminal proceedings[31].

In procedural literature, it is reasonably stated that the main way of gathering and verifying evidence is investigative actions[32]. Depending on the investigative situation that occurs in the criminal investigation of the legalization (laundering) of proceeds of crime, the circumstances to be proved may be established by various investigative (search) activities. The most widespread among them in this category of criminal proceedings are examination, review of documents, temporary seizure of property, search, appointment and conducting forensic examinations.

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[29] Pohoretskyi M. A. Funktsionalne pryznachennia operatyvno-rozshukovoi diialnosti u kryminalnomu protsesi : [monohrafiia] / M. A. Pohoretskyi – Kh. : Arsis, LTD, 2007. – S. 507.

[30] Bernaz V. Dokazuvannia obstavyn vchynennia kryminalnoho pravoporushennia za chynnym KPK Ukrainy / V. Bernaz // Pravo Ukrainy. – 2013. – № 11. – S. 175-176.

[31] Bernaz V. Dokazuvannia obstavyn vchynennia kryminalnoho pravoporushennia za chynnym KPK Ukrainy / V. Bernaz // Pravo Ukrainy. – 2013. – № 11. – S. 178.

[32] Zhogin N. V. Predvaritel’noe sledstvie v sovetskom ugolovnom protsesse / N. V. Zhogin, F. N. Fatkullin. – M. : Yurid. lit., 1965. – S. 112; Strogovich M. S. Kurs sovetskogo ugolovnogo protsessa / M. S. Strogovich. – M. : Nauka, 1970. – T. 2. – S. 100; Gromov N. A. Ugolovnyy protsess Rossii : [ucheb. posobie] / Gromov N. A. – M. : Yurist", 1998. – S. 285.

CONCLUSIONS

Summarizing the above, we note that legalization is in any case preceded by the commission of another socially dangerous act. Property that is illegally acquired during the commission of the substantive crime becomes then the subject of "laundering". Thus, without evidence of a person's involvement in the commission of the main criminal activity, it is impossible to bring it to criminal responsibility for legalization[33]. A feature of the object of proof of the crimes provided by Art. 209 of the CC of Ukraine is that it is necessary to prove at least two criminal incidents: a crime that resulted in criminal incomes and actually the legalization (laundering) of these incomes. This implies an important provision for investigation, namely: the nature of investigating situations of the initial stage of the investigation of the money laundering is determined by the situation created in the criminal proceedings on a predicate crime.

Procedural means for establishing the circumstances to be proved in criminal proceedings in relation to money laundering are: a) evidence; b) investigative (search) activities, secret investigative (search) activities aimed at obtaining (gathering) evidence; c) other procedural measures (compulsory measures and security measures applied to participants in criminal proceedings and their close relatives) aimed at ensuring the establishment of the circumstances to be proved in the said criminal proceedings and solving the tasks of criminal proceedings.

SUMMARY

Problems of proof of legalization (laundering) of proceeds of crime are investigated. The analysis of theoretical and methodological sources about proof in the criminal process in Ukraine is carried out. The attention is focused on the circumstances to be proved and their systematization. Particular attention is paid to proving a predicate crime indicating the norms of international law. It is noted that along with the need to prove a number of crimes, proving the intentions of the person also serves as an important link in the investigation of a crime. In addition, the establishment of circumstances to be proved during a pre-trial investigation of money laundering is possible only with the comprehensive application of means of proof.

[33] Arkusha L. I. Lehalizatsiia (vidmyvannia) dokhodiv, oderzhanykh u rezultati orhanizovanoi zlochynnoi diialnosti: kharakterystyka, vyiavlennia, rozsliduvannia : monohrafiia / L. I. Arkusha. – Odesa : Yurydychna literatura, 2010. – S. 226.

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CHAPTER 9
LEGAL REGULATION OF ELECTRONIC MONEY CIRCULATION (ON THE EXAMPLE OF LEGISLATION IN EU AND IN UKRAINE)

Riadinska V. O.

Introduction

According to Art. 139 p. 6 Clause 6 «Financial Services» about the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other part, dated 03.21.2014 (hereinafter – Agreement Association), the parties of this association have agreed to promote the development of electronic commerce between them[1]. At present stage, electronic money is widely used in e-commerce.

Electronic money emerged in the late 80s of the XX century, eventually experienced rapid development and increasingly occupied financial market. According to the Bank for International Settlements, the volume of transactions with electronic money in circulation in 2005 amounted to 41 million dollars, in 2010 – to 25 billion dollars and in 2015 – to 400 billion dollars. The popularity of electronic money attracted attention to the issue of the need for their legal regulation.

In foreign countries, theoretical studies on the economic, technical and legal aspects of emissions and circulation of electronic money have begun almost immediately after their emergency on the market, and in 1998 the European Central Bank, on the basis of an analysis carried out by the European Monetary Institute, has already noted the need for legislative fixing of clear rules that would regulate the relationship with the emission of electronic money. Since then, the legal regulation of electronic money circulation has constantly developed in the EU countries, which has created an effective system for regulating the issue and circulation of electronic money, known as the «European Model of Electronic Money

[1] Agreement on Association between Ukraine, on the One Hand, and the European Union, the European Atomic Energy Community and their Member States, on the other Hand, dated 21.03.2014, URL : http://www.kmu.gov.ua/control/uk/publish/article?art_id=248387631l.

Circulation Regulation», which was originally implemented in the norms of the Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions”, and then, taking into account the practice of its application and the changes that have taken place in the technological aspects of electronic money, in the norms of the Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC)”.

Despite the fact that in the EU countries for two decades financial and legal regulation of the circulation of electronic money was developing, Ukraine did not even attempt to develop special regulations that would regulate such legal relations, while since the beginning of the 2000s such operators of electronic money as WebMoney Transfer, Limonex, UkrMoney, Yandex.Money and others began to function actively in our country. According to analytical calculations (official statistics are not available), the electronic money market in Ukraine in 2003 was UAH 308.64 million, and in 2015 – UAH 1.85 billion.

The lack of normative regulation of emissions and circulation of electronic money in Ukraine aroused numerous legal problems, since the functioning of electronic money operators under conditions of legal uncertainty gave them opportunities for abuse, the creation of tax optimization schemes that bordered by tax evasion, allowed the use of funds in illegal transactions, and other participants of the financial market from the circulation of electronic money put in a disadvantage, because the state did not provide them the reliable legal protection etc.

The first normative act aimed at the regulation of the circulation of electronic money in Ukraine (the Regulation on Electronic Money, approved by the Resolution of the National Bank of Ukraine No. 178). Ukraine’s aspiration for Eurointegration necessitates the further development of legal regulation of electronic money circulation in accordance with the norms of European legislation.

9.1. Legal regulation of circulation of electronic money in the EU

The issue of legal regulation of electronic money circulation in the EU was initiated by the Commission of the European Communities on January 12, 1987, whose members stated that most multifunctional payment cards are issued by non-banking organizations and other institutions, while in the interests of protecting the integrity of the retail payment system, protection of consumers from the consequences of the refusal of issuers of electronic purses to make payments for them, the need for a consistent credit policy, the supervision of free the competition between issuers, the right to issue electronic purses should be given exclusively to credit organizations, or be put on organizations that are eager to release electronic purses, etc.[2] A Working Group on Payment Systems was set up, which in 1994 prepared the «Report for the Council of Europe on Prepaid Cards» and transferred it to the European Monetary Institute (the prototype of the European Central Bank), which proposed to limit the right to issue electronic money exclusively by banks[3].

However, since the publication of the report there has been a surge in the use of electronic money, due to the development of the Internet. In 1997, when the circulation of electronic money gained momentum, the Council of the European Monetary Institute drew attention to the problems of their circulation and, on the basis of the report previously discussed, prepared an annual report stating that at that stage, electronic money was not very widespread , but in the long-term aspect of the development of their widespread use cannot be avoided; in addition, it was considered that in the future, the issuance of electronic money will significantly affect the monetary policy. Based on this, it was considered to be important to establish the rules and conditions for the issuance of electronic money and the basic principles of the circulation of electronic money were formulated, including the insurance of obligations for non-bank organizations issuing electronic money, the exchange of electronic money on the banknotes of the central bank at par. at the request of the owner of electronic money; basic requirements for the status of organizations that carry out the issue of

[2] Commission Communication of 12 January 1987: "Europe could play an ace: the new payment cards" COM(86) 754 final.

[3] Genkin, A.C. 2003, Legal Status of E-money and Electronic Payment Systems, Business and Banks 15, p. 23.

electronic money (regardless of their organizational and legal form and the availability of permission for banking) have been defined[4].

In 1998, the European Central Bank, on the basis of an analysis, conducted by the European Monetary Institute, published a report that first recognized the need for legislative securing of clear rules governing the relationship between issuance and circulation of electronic money; the report outlined proposals for setting the necessary requirements for organizations issuing electronic money, minimum requirements for electronic money and minimum requirements for the protection of electronic money holders[5]. The report specifically emphasized that the most effective solution would be to grant the right to issue electronic money exclusively to lenders, as this would give the possibility to avoid a change in the existing institutional framework for monetary policy and banking activities[6]. An active position of the European Central Bank has led to the adoption of the Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 "On the taking up, pursuit of and prudential supervision of the business of electronic money institutions"[7] (hereinafter – the Directive 2000/46/EC) devoted to the regulation of the circulation of electronic money. In addition to the general provisions regulating the issuance and circulation of electronic money (the concept of electronic money, issuing activities in the field of electronic money, the exclusion of electronic money circulation regulation, etc.), it included important amendments to the Directive 77 780/EEC regarding the definition of the term «credit organization» – supplemented by provisions on non-bank organizations that carry out the issue of electronic money. Thus, institutions and organizations that cannot carry out banking operations to the full extent have been given the opportunity to issue electronic money, subject to compliance with the rules governing the activities of credit organizations[8].

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[4] Commission Recommendation of 8 December 1997 87/598/EEC on a European Code of Conduct relating to electronic payment (Relations between financial institutions, traders and service establishments, and consumers), Official Journal L 365, 24.12.1997.

[5] Annual report 1997, EMI, Frankfurt am Main, 1998.

[6] Report on Economic Money, European Central Bank, Frankfurt am Main, August 1998, 47 p.

[7] On the taking up, pursuit of and prudential supervision of the business of electronic money institutions : Directive 2000/46/EC of the European Parliament and of the Council of 18.09.2000, Official Journal of the European Communities, L 275/39. 27.10.2000, 39–43.

[8] On the taking up, pursuit of and prudential supervision of the business of electronic money institutions : Directive 2000/46/EC of the European Parliament and of the Council of 18.09.2000, Official Journal of the European Communities, L 275/39. 27.10.2000, 39–43.

In addition, the 2000/146/EC Directive – concept of electronic money has fixed a number of key provisions, the main among which were:

– the order of issuing activity in the field of electronic money, other than reception of deposits (when purchasing a pre-paid instrument, money has been immediately transformed into the value stored on an electron storage, while the mentioned transaction was not classified as an involving a deposit and was not fixed by the state schemes of guaranteeing deposits);

– obligations of the issuer on the exchange of electronic money issued by him for the money of central banks and the provision of financial statements;

– an exclusion from the system of regulation of electronic money of such types of the commitments that are emitted, which did not ensure the performance of functions of a valuable exchange medium, since it was used for a limited number of entities;

– the range of organizations corresponding to the definition of «institution in the field of electronic money circulation» by assigning to them non-banking institutions that were granted the right to issue electronic money on an unprofessional basis, to provide financial and non-financial services directly related to the issuance of electronic money (except of loans in any form); to invest funds at least equal to their financial obligations related to the issuance of electronic money in assets with low or zero risk;

– the introduction of the principle of a «single European window» for organizations issuing electronic money, which allowed a credit organization registered in one EU country to operate on the territory of the whole EU, under condition of an obtaining a European passport (single license);

– an establishment of requirements to the issuer of electronic money, intending to obtain a European passport (compliance with the principles of the First EU Banking Directive on Mutual Recognition of Licenses and Prudential Supervision and Principles of National Control of a Member State; compliance with the objectives of Directives 91/308 / EEC and 2000/12 / EC on preventing the use of the financial system for money laundering purposes);

– general rules in the field of licensing and supervision of these institutions, as well as restrictions on investment projects at the expense of

funds received from the emission of electronic money, specific requirements to the corporate governance system;

– minimum capital requirement (EUR 1 million, for banks – EUR 5 million), minimum and constant own funds (at least 2% of current or weighted average current liabilities over the last six months, for banks – 8%); and limitations of technical means for storing and accounting electronic money, the maximum amount of electronic money in 150 euros;

– an establishment of the requirement that investments by institutions in the field of circulation of electronic money of free funds should not be lower than financial commitments for issued electronic money, with investments not to exceed 20 times the own funds of the issuer of electronic money;

– requirements to the information on emissions and the circulation of electronic money in special control agencies at least 2 times a year, informing clients about possible deposit insurance, commissions, claims settlement procedures, liability for lost electronic money, product features, etc.;

– the procedure for the transfer of electronic money into the cash (the client was entitled to apply to the issuer for the equivalent and free exchange of the value that he owns in electronic money, in coins, banknotes or non-cash money in the account, and the issuer was not entitled to refuse it);

– there is no requirement for identification of clients and detection of suspicious transactions[9].

At the same time, the aforementioned Directive provided for a significant number of exceptions that allowed the legal regulation of the circulation of electronic money through the rules of national law, which led to the uneven application of the rules of Directive 2000/46/EC in different countries – EU Member States.

Investigating the rules of Directive 2000/46 / EC, K.L. Ranchinsky noted that this Directive contained less stringent requirements for supervision and prudential control over the activities of issuers of electronic money in comparison with the requirements set forth in the Banking Directive for banks and other lending organizations due to other risks inherent in the issuance of electronic money and the desire to involve

[9] On the taking up, pursuit of and prudential supervision of the business of electronic money institutions : Directive 2000/46/EC of the European Parliament and of the Council of 18.09.2000, Official Journal of the European Communities, L 275/39. 27.10.2000, 39–43.

non-bank organizations in this area; while the Directive stipulated more stringent requirements for institutions in the sphere of circulation of electronic money in relation to investment activity at the expense of funds received during the issue and it was imposed a ban on certain types of activities[10]. G. Kuchinska, analyzing the importance of Directive 2000/46/EC for the development of electronic money, noted that it played a significant role in streamlining the circulation of electronic money, since, on the one hand, it was in force in the territory of the EU, and on the other – its positions were subject to mandatory implementation in national legislation, since this Directive was considered not only as a step towards unification and harmonization of normative regulation of electronic money circulation, but also as a benchmark for the countries where the process of national legislation development in the regulation of electronic money had been continuing[11].

In October 2002, the Association of Electronic Money Institutions in the Netherlands conducted a study on the implementation of the provisions of Directive 2000/46/EC in the legislation of the EU Member States, which found out that 5 of the 15 countries did not implement its norms in their legislation due to differences in national legal regulation of the banking system (in different countries, the same issuer can be recognized both as an emitter of electronic money and as a banking system; even within one country, almost identical emitters of electronic money could have varied legal status depending on the technical differences)[12]. However, by 2004, most EU member states have unified their legislation in accordance with the provisions of the Directive 2000/46/EC.

Foreign scholars, in particular M. Vereecken, noted the excessive severity of the provisions of Directive 2000/46 / EC with regard to the size of statutory capital, minimum reserves and asset management methods[13]. Indeed, the charter capital of EUR 1 million was redundant and disproportionate to the risks accompanying the services associated with the issuance of electronic money; since it prevented the entry of small firms

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[10] Ranchinsky, K.L. 2011, "Issues of the Legal Status and Regulation of Electronic Money in the EU Countries", Herald of the RUDN University 1, p. 73.

[11] Kuchinskaya, A.R. 2012, "The Legal Nature of Electronic Money", Mogilev State A. Kuleshov University 2(40), p. 64.

[12] Genkin, A.S 2003, "The Legal Status of Electronic Money and Electronic Payment Systems, Business and Banks" 15, p. 26.

[13] Vereecken, M.A. 2000, "Single Market for Electronic Money", Journal of International Banking Regulation, July. p. 70

into the financial market (they could not obtain a license for the issue and circulation of electronic money).

However, due to the relatively small volume of electronic money circulation in the first years after the adoption of the above-mentioned Directive, no active steps were taken to amend its norms, while the development of technologies and volume of payments by electronic money increased (according to the European Central Bank, if in the beginning of 2000 only 1% of non-cash payments were made by using electronic money, then in the middle of 2000s their volume reached 10%), which caused new gaps in the rules of the Directive 2000/46/EC.

In addition, the status of credit the institutions as institutions in the field of electronic currency has caused the emergence of new issues in this area: whether money received through the issuance of electronic money, can be considered as a deposit, and if it is so, can interest accrue to them; whether the institutions that issue electronic money have the right to issue loans in electronic money, etc. The European Commission and the ECB drew a conclusion that such forms of activities cannot be carried out by credit institutions, but this approach contradicted the general understanding of the status and functions of credit institutions, which, in turn, delayed the adoption of a number of national regulatory acts, providing for their own mechanism of legal regulation of these issues.The situation was aggravated with the adoption of the Directive 2007/64/EC of the European Parliament and of the Council of November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC[14], in which the concept of «payment services» was set forth and the conditions for non-cash settlements were established.

The next stage in the development of the legal framework for the circulation of electronic money in the EU countries has become the Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (hereinafter – Directive 2009/110/EC)[15].

[14] Directive 2007/64/EC of the European Parliament and of the Council of November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC

[15] Directive 2009/110/EC of the of the European Parliament and of the Council of 16 September 2009 On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC), Jornal of Financial Services Research, 2009.

Directive 2009/110/EU introduced a number of novels into the legal regulation of the circulation of electronic money:

– a new definition of electronic money as a monetary value, which is expressed by the requirements to the issuer, stored by electronic (including magnetic) storage, which is emitted when cash is received in order to carry out payment transactions, specified in Clause 5 of Art. 4 of the Directive on Payment Services in internal markets dated 13.11.2007 (hereinafter – Directive 2007/64/EC)[16]);

– the acts initiated by a payer or a receiver for the placement, transfer or withdrawal of funds, irrespective of any liabilities, between the payer and the payee) accepted by individuals and legal entities other than the issuer;

– electronic money is classified as cash placed directly at the disposal of the holder of cash and cash, which is stored remotely and managed through a special account of the holder of electronic money;

– the order of the organization of the issue of electronic money is regulated;

– the legal order of issuing by the payment service provider of the stored value in exchange for cash is set forth;

– equal conditions for all providers of payment services, issuing electronic money are legally stipulated;

– it is provided the order of electronic money status in cases where a financial instrument of one-use or limited use in the process of development becomes a tool of multi-purpose or universal use;

– the circle of emitters of electronic money, including the European Central Bank and national central banks, when they do not act as monetary regulators and do not fulfill the functions of public regulators; member states or their regional and local authorities when they do not function as public regulators is set forth; lending institutions whose activities consist in receiving deposits or other funds payable from the population and providing loans at their own expense, their branches; emitters of electronic money – legal entities authorized to issue electronic money, their branches;

[16] Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, URL : http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32007L0064

post offices, which are allowed by national legislation to issue electronic money[17].

The comparison of the rules of the Directive 2000/46/EC with the norms of the Directive 2009/110/EU allows to state that the main changes introduced into the legal regulation of the circulation of electronic money in the EU countries were: to reduce requirements for the authorized capital of institutions issuing electronic money from 1 million euro to 350 thousand; to replace capital requirements by new calculation requirements, taking into account the nature of the activities of institutions issuing electronic money and risk structures; to provide the activities of institutions issuing electronic money expanded (in addition to issuing electronic money and providing services directly related to the issuance of electronic money, provided an opportunity to provide payment services, to issue loans within the limits of payment services provided (provided that they issued not from funds that were involved in exchange for electronic money), to operate payment systems, etc.); to secure the right of users to return the money free of charge at any time, subject to the full refund of electronic money; it is provided that the issuer of electronic money is able to charge commission in accordance with the transaction value if the issuer provided in a contract with the user. By the definition of V.S. Aksenov, N.V. Zakharova, the provisions of Directive 2009/110/EC were developed in accordance with the provisions of Directive 2007/64/EC, and created the basis for providing market access for new players, an effective competitive environment for all participants in order to introduce innovations in the payment market[18].

The experience of legal regulation of the issue and circulation of electronic money in the EU shows that too strict methods of financial regulation, setting forth the requirements to emitters of electronic money, have become an obstacle to the further development of the entire system of electronic payments, resulting in determining the requirements for the institutions in the field of electronic money circulation, so it is necessary to apply a balanced approach which takes into account both the public-law

[17] Directive 2009/110/EC of the of the European Parliament and of the Council of 16 September 2009 On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC), Jornal of Financial Services Research, 2009.

[18] Aksenov, V.S., Zakharova, N.V. 2010, "The State Regulation of Circulation of Electronic Money in Foreign Countries", Economic Journal 2, p. 115.

and the private interests of all participants in the circulation of electronic money.

The provisions of the Directive 2009/110/EC, as well as the provisions of the Directive 2000/46/EC, were also subject to the mandatory implementation in the national legislation of the EU, until April 2011, but according to the decision of the national authorities, a number of provisions of the Directive 2009/110/EC could not be implemented in the national laws of the EU countries. Thus, the provisions of the abovementioned Directive were not applied to organizations that were formally involved in the issuance of electronic money whose par value did not exceed 6 million euros; in cases when previously issued electronic money was taken by a pre-limited number of enterprises; in the case of a clear geographical location of the issuer; in the case of a contractual relationship between the issuer and the companies that took the electronic money.

The United Kingdom again became the first country to change the national legislation in line with the new Directive by adopting the Electronic Money Regulations, which was developed in accordance with Directive 2009/110/EC, taking into account certain features of national legislation: electronic money was defined as a monetary amount stored electronically (including on a magnetic storage, which is presented in the form of a requirement to the issuer of electronic money issuing (emitting) electronic money with the receipt (income) of funds to the account for the purpose of payment transactions, and which is accepted other than the issuer, persons (entities); electronic money was money based on payment cards, and electronic money based on computer networks; cannot be considered as electronic money: a) the amount held on instruments that can be used to supply goods and services only at the premises of the issuer of electronic money, or by virtue of a trade agreement with the issuer of electronic money, or within a limited network of service providers, or for the acquisition of a limited range of goods or services; b) the amount of money used for conducting payment transactions carried out by any means of communication or information devices where the goods or services purchased are delivered and must be used by means of communication, digital or information devices; electronic money institutions and their affiliates in the Unified Economic Space, small electronic money institutions, agents of these institutions, credit institutions, limited post

offices, the Bank of England, the European Central Bank (if they do not act as currency control bodies or other state bodies), government departments and local authorities that function as public regulators, credit unions, municipal banks, the National Savings Bank, etc.[19].

In other countries, the implementation of national legislation has also taken place in accordance with the requirements of Directive 2009/110/EC and at the present stage in all EU countries this process has been completed. The national legislation was adopted either in accordance with the aforementioned Directive or more stringent than the ones stipulated by the Directive 2009/110/EC, requirements for institutions in the field of electronic money circulation: requirements for the minimum amount of electronic money issuers increased, maximum electronic purse was reduced, established investment restrictions, as well as the requirements for identifying the owner of the electronic purse were reduced; the right to issue cash money was granted exclusively to banks and credit organizations (Austria, Germany, Spain, Portugal); a ban on the simplified operation of emitters of electronic money (Italy, Lithuania) is settled; prudential regulation requirements (Greece, Sweden) were strengthened. To summarize, we note that the legal regulation of the circulation of electronic money in the EU states contains clear and understandable requirements for the circulation of electronic money, enabling the functioning of electronic money that already exists in the market, creates legal preconditions for the creation of new types of electronic money in the future, does not prevent introduction of new technological innovations. At the present stage, the main tendencies of financial and legal regulation of emissions and circulation of electronic money in the EU are: unification of categorical apparatus (the only approach to the definition of electronic money); 2) introduction of a simplified mode of operation of issuers of electronic money (unification of the issuance of licenses and securing the application nature of the use of simplified mode); 3) liberalization of the requirements for issuers of electronic money (permitting for non-bank institutions to issue electronic money, reducing the requirements for the minimum authorized capital).

[19] The Electronic Money Regulations, URL : http://www.legislation.gov.uk/uksi/2011/99/contents/made

9.2. Normative regulation of electronic money circulation in Ukraine and the directions for its improvement in accordance with EU legislation

Normative regulation of the circulation of electronic money in Ukraine for a long time was almost not developed, except for individual regulations, the norms of which created the basis for the circulation of electronic money in the territory of Ukraine. One of the first such acts was the Order of the President of Ukraine «About the System of Electronic Money Circulation in Ukraine» dated April 30, 1992 No. 79, which provided that in order to ensure the transition to modern methods of credit and financial transactions, to improve the system of circulation of money and to protect economic Ukraine's interests it is necessary to develop the State Program for the creation of a system of electronic money circulation in Ukraine, the customer of which is recognized by the National Bank of Ukraine, and the developer – the Academy of Technological Sciences of Ukraine with participation of the public authorities[20].

On June 11, 1994 the Cabinet of Ministers of Ukraine adopted Resolution No. 390, envisaging the introduction of electronic control systems and commodity-money management[21], according to which the National Bank of Ukraine developed the Concept of the system of electronic payments for goods and services in Ukraine, approved by the Decree of its Board July 18, 1994 [19]. On the basis of this Concept, on January 28, 1997 the Resolution of the National Bank of Ukraine «About the Introduction of the National System of Mass Electronic Payments in Ukraine» No. 18 was adopted on 28.01.1997, which provided the regulation of the implementation of mass electronic payment systems with use of payment cards on the territory of Ukraine[22].

On May 20, 1999 the Law of Ukraine «About the National Bank of Ukraine» No. 679-XIV, in which Art. 7 it was assumed that the functions of the National Bank of Ukraine include the definition of the directions of the development of modern electronic banking technologies, creation and provision of continuous, reliable and efficient functioning and

[20] About the System of Electronic Money Circulation in Ukraine: Order of the President of Ukraine dated April 30, 1992, No. 79. URL : http://zakon5.rada.gov.ua/laws/show/ru/79/92-rp

[21] About the Introduction of Electronic Systems for Control and Management of Commodity and Money Circulation: Resolution of the Cabinet of Ministers of Ukraine dated June 11, 1994 No. 390. http://zakon2.rada.gov.ua/laws/show/390-94-п

[22] About the Introduction of the National System of Mass Electronic Payments in Ukraine: Resolution of the National Bank of Ukraine No. 24-/611-8439 dated 19.10.99., URL : http://zakon2.rada.gov.ua/laws/show/v8439500-99

development of payment and accounting systems established by them, the control over created payment instruments of banking automation systems and bank protection means information[23]; but in Art. 40 it was noted that the National Bank of Ukraine establishes rules, forms and standards of settlements of banks and other legal entities and individuals in the economic circulation of Ukraine with the use of both paper and electronic documents, as well as payment instruments and cash, coordinates the organization of settlements, gives permits for the implementation of clearing operations and settlements[24]; on 12.07.2000, the Law of Ukraine «About Banks and Banking» came into force from No. 2121-III, in which Art. 51 it is stated that non-cash payments were made on the basis of settlement documents on paper or electronically[25]; on December 7, 2001, the Law of Ukraine «About State Regulation of Financial Services Markets» was passed from No. 2664-III, in which Art. 4 it is indicated that financial services are the issue of payment documents, payment cards, traveler's checks and/or its servicing, clearing, other forms of provision of settlements (including issuance of electronic money).

While in foreign countries over the course of two decades financial and legal regulation of electronic money circulation has developed, in Ukraine only a normative basis was created for the introduction of emitting and circulation of electronic money, and even there were no attempts to develop special regulations that would regulate such legal relations, in while since the beginning of the 2000s, such operators of electronic money as WebMoney Transfer, Limonex, UkrMoney, Yandex.Money and others have been active in its territory. According to analytical calculations (official statistics are not available), the electronic money market in Ukraine in 2003 amounted to UAH 308.64 million, and in 2015 – UAH 1.85 billion.

One of the main problems of legal regulation of the circulation of electronic money in Ukraine is the requirement for issuing electronic money exclusively by banks. In the study of the European model of emission and circulation of electronic money, it was determined that with the adoption of Directive 2009/110/EC, the circle of institutions in the field of electronic money circulation was expanded by assigning to them non-banking institutions that were granted the right to emit electronic money on

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[23] About the National Bank of Ukraine: Law of Ukraine dated May 20, 1999 No. 679-XIV Information from the Verkhovna Rada of Ukraine 1999 № 29. Art. 238.

[24] About the National Bank of Ukraine: Law of Ukraine dated May 20, 1999 No. 679-XIV Information from the Verkhovna Rada of Ukraine 1999 № 29. Art. 238.

[25] About Banks and Banking: Law of Ukraine dated December 12, 2000 No. 2121-III, Information from the Verkhovna Rada of Ukraine 2001, № 5–6 Art. 30.

a non-professional basis, that is, abolished by a monopoly banks and other lending institutions for the issue of electronic money. Consequently, at the present stage, the norms of the national legislation of Ukraine are more burdensome than the norms of European legislation. As it is determined by P.M. Senish, V.M. Kravets, V.I. Mishchenko and other scholars, the world-wide experience in regulating the circulation of electronic money, have shown that in countries that have a strict rule for emitting electronic money only by banks, there are no national electronic money systems, and emitters of electronic money from other countries that rule more democratic (for example, most electronic money systems in the EU are registered in the UK and Luxembourg, since liberal regulatory requirements for e-money issuers are in these countries)[26]). A.P. Novitsky, analyzing the requirements for the issuance of electronic money exclusively by banks, indicates that banks have the opportunity to offer their customers payment instruments that are related to the existing payment infrastructure in the form of non-cash accounts and online banking tools, therefore, electronic money systems are not for them a profile type of business, which, in addition, requires additional costs for the integration of such a system to the information systems of the bank[27]. Consequently, the definition of the issuers of electronic money exclusively for banks is ineffective, but Ukraine has resorted to such a limitation. There is a logical question: why was it possible to exclude from circulation electronic money of other possible issuers who would like to participate in circulation, if the restrictions in the use of electronic money do not promote their spread? The reason for this is that electronic money allows for anonymous settlement transactions, which allows their users to avoid taxation and carry out illegal money laundering transactions. In foreign countries, this reason is eliminated by establishing a mandatory identification of accounts of legal entities and individual entrepreneurs, which are used for entrepreneurial activity.

Thus, in order to improve the legal regulation of the circulation of electronic money in Ukraine in accordance with the legal regulation of the circulation of electronic money in the EU countries, it is necessary: to expand the circle of emitters of electronic money by assigning non-bank institutions to them; establishment of the obligation to obtain licenses from non-banking institutions for the issue of rights and transactions with

[26] Senysh, P.M., Kravetz, V.M., Mishchenko, V.I. and others 2008, "World Experience and Prospects of Electronic Money Development in Ukraine": Scientific and Analytical Materials 10, p. 43.

[27] Novitsky, A. 2008, "Electronic money – the Problems of Legal Support of Circulation in Ukraine", Legal Informatics 1, p. 49.

electronic money issued by the National Bank of Ukraine; introduction of licensing of business entities for receiving electronic money in exchange for cash; developing and adopting a procedure for displaying transactions with electronic money in tax and accounting for e-money issuers – non-bank institutions.

CONCLUSION

The experience of legal regulation of issuance and circulation of electronic money in the EU shows that too stringent requirements for e-money issuers become an obstacle to the further development of their electronic payment system, which means that, in determining the requirements for institutions in the field of electronic money circulation, it is necessary to apply a balanced approach that will ensure the optimal ratio of public-law and private interests of all the participants in the circulation of electronic money.

Legal regulation of the circulation of electronic money in the EU countries at the present stage contains clear and understandable requirements for such a circulation, provides the possibility of functioning of electronic money that already exists in the market, creates legal preconditions for the creation of new types of electronic money in the future, does not prevent the introduction of new technological innovations. The main tendencies in financial and legal regulation of emissions and circulation of electronic money in the EU are: unification of categorical apparatus (the only approach to the definition of electronic money); 2) introduction of a simplified mode of operation of issuers of electronic money (unification of the issuance of licenses and securing the application nature of the use of simplified mode); 3) liberalization of the requirements for issuers of electronic money (permitting non-bank institutions to issue electronic money, reducing the requirements for the minimum authorized capital).

In order to improve the legal regulation of electronic money circulation in Ukraine in accordance with the legal regulation of circulation of electronic money in the EU countries, it is necessary: to expand the circle of emitters of electronic money by assigning non-bank institutions to them; establishment of the obligation to obtain licenses from non-banking institutions for the issue of rights and transactions with electronic money issued by the National Bank of Ukraine; introduction of licensing of business entities for receiving electronic money in exchange for cash / cashless money; development and adoption of a procedure for the display

of transactions with electronic money in tax and accounting for emitters of electronic money – non-bank institutions. In order to improve the legal regulation of electronic money circulation in Ukraine in accordance with legal regulation of circulation of electronic money in the EU countries, it is necessary: to expand the circle of emitters of electronic money by assigning non-bank institutions to them; to establish the obligation to obtain licenses from non-banking institutions for the issue of rights and transactions with electronic money issued by the National Bank of Ukraine; to introduce licensing of business entities for receiving electronic money in exchange for cash.

SUMMARY

The authors study the development of legal regulation of electronic money circulation in Ukraine. Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions”, Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 “On the taking up, pursuit of and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC” are analyzed.The basic aspects of the legal regulation of electronic money circulation in Ukraine are considered. The development of legal regulation of circulation of electronic money in Ukraine is investigated. The directions of an improvement of the national legislation in accordance with European tendencies of the legal regulation of circulation of electronic money are determined.

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CHAPTER 10
LEGAL REGULATION OF FINANCING OF THE BODIES OF THE MINISTRY OF INTERIOR OF UKRAINE IN THE CONTEXT OF MANAGEMENT BY OBJECTIVES

Soldatenko O. V.

INTRODUCTION

The main legislative document regulating the financing of budgetary institutions in Ukraine, in particular, state government bodies, local authorities, as well as organizations created by them under the established procedure, fully financed from a respective state or local budget, is the Budget Code of Ukraine of June 08, 2010, No. 2456-VI (as amended)[1]. It states that budgetary institutions are not-for-profit, and Article 87 stipulates that expenditures for law enforcement activities, ensuring state security and protection of civilian population and territory be financed from the State Budget of Ukraine.

One of the central executive power bodies is the Ministry of Interior of Ukraine (hereinafter referred to as the MIU). The National Guard of Ukraine functions within the system of the MIU. The main service center of Ukraine ensures the provision of paid-for and free-of-charge services reserved under the competence of the MIU. Besides, currently, the central executive power bodies whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs are: the National Police of Ukraine, the State Migration Service of Ukraine, the State Border Guard Service of Ukraine, the State Emergency Service of Ukraine, expenditures for whose activities are financed from the State Budget of Ukraine according to the codes of the classification of expenditures and state budget financing – CCESBF 1000000−1007000.

Throughout almost the whole period of independence of Ukraine, the financing the mentioned bodies remained insufficient, which has been repeatedly mentioned in scientific works proposing main ways of solving this problem, mainly through increasing the volume of such financing.

[1] Verkhovna Rada of Ukraine (2010) Byudzhetnyy kodeks Ukrayiny, available at: https://zakon.rada.gov.ua/laws/show/2456-17.

Considering the importance of the functions fulfilled by these bodies, we will analyze the theoretical and legal foundations and the state of their budget financing during the last 4 years, which is important both in the context of the development of theoretical foundations of the financial and legal science, and in the practical operations of the mentioned law enforcement agencies in Ukraine.

The issue of financing the internal affairs bodies are considered in the thesis work of O. Chimarova[2] and A. Chubenko[3]; in the opinion of the latter, the lack of financing threatens to turn the MIU into the body acting below its capacity. The financial support of the preventive activities of the National Police is looked into in the work of V. Felyk[4], who views such financial support as a process of budget allocation, as well as arrival and use of financial resources from other sources not prohibited by the legislation, in the amounts necessary for labor remuneration, medical, sanatorium and resort, pension, housing and other kinds of social security of law enforcement officers and their family members (to the extent permitted by the legislation).

The matters of financial support of law enforcement bodies were studied by A. Subbot[5], the legal issues of financing the Ministry of Interior of Ukraine was researched by O. Bukhtiyarov[6], and the issue of their financing using management by objectives was looked into O. Derevchuk[7]. At the same time, the most thorough analysis of the dynamics of financing the MIU was conducted during the years of independence of Ukraine from 1991 to 2007 by I. Zozulya[8]. The mentioned research states that to support the MIU, 3 to 4 % of budget funds were allocated form the annual budget, and discloses the changes in the structure of expenditure items over the

[2]Chimarova O.M. (2006), Pravovoy rezhim finansirovaniya organov vnutrennikh del Rossiyskoy Federatsii, Thesis for the degree of candidate of legal sciences in specialty 12.00.14, Saratov.

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years. The author makes a conclusion about the urgent need to develop a methodology of calculating the resourcing and financial capacity of the MIU, and about the general profitability of the department, which, actually, is the aim of management of budget expenditures by objectives.

The amounts of financing of MIU over the period of 2010-2015 are described in the article by O. Soldatenko[9]; in particular, the article mentions that since the beginning of the reform of MIU, which began in 2014, the volumes of budget funds allocated for this Ministry rose dramatically: to 5.66 % in 2015 in comparison to 3-4 % of the total amount of expenditures of the State Budget of Ukraine throughout all previous years. Such growth of the amount of financing is noted also in the article by V. Felyk[10], who points out that the reforming of the bodies of internal affairs of Ukraine and the creation of the National Police of Ukraine were accompanied by significant financing both from the State Budget of Ukraine and from other sources. Such funds are allocated to cover not only such traditionally substantive expenditure as labor remuneration but also modernization and improvement of material and technical facilities.

Considering the great number of scientific publications on the defined topic, we believe that to date, the state of budget financing of the system of internal affairs bodies during 2016-2019 through the management of budget expenditures by objectives remains unexamined, which is one of the tasks of this research, along with defining separate existing problems in this process and proposing the main ways of overcoming them.

10.1. The notion of financing in the legal science

First, we will consider the theoretical basis of the notion «financing», which is understood by legal scientists as the provision of state and municipal financial resources to budget fund recipients, budgets of different levels, unitary enterprises, regulated by the legal norms[11].

In the book by the Ukrainian classic of financial law, Professor L. Voronova «Budgetary legal regulation in the USSR», the following definition is given: «The notion of financing has two meanings: a) any issue of funds irrespective of the source and form of the issue (recoverable

[9] Soldatenko O. V. (2015) Vydatky byudzhetu na okhoronu zdorov’ya: problemy ta perspektyvy pravovoho rehulyuvannya. Pravove rehulyuvannya ekonomiky, 15, pp. 60–72.

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[11] Belsky K. S., Zapolsky S. V. (2006) Finansovoye pravo: uchebnik, Moscow, 536 p.

and non-recoverable forms are distinguished); b) only the non-recoverable form of issue of funds. Non-recoverability is the main criterion distinguishing financing from crediting. Financing, being a non-recoverable issue of funds, is provided from various sources, the state budget being the main one, along with private finances of self-supporting enterprises and organizations, which is why the notion of financing is broader than the notion of budget financing»[12].

In another academic paper by Professor L. Voronova, one more definition of the notion «financing» is given – this is the legislation-based planned, targeted, non-recoverable and non-recompensable issue of funds conducted with the consideration of the optimal unification of private, credit and budget sources of financing following the implementation of the plan of the use of funds to fulfill the state functions, adhering to the regime of economy and conducting continuous monitoring. Financing is made from various sources: budgets of different levels – from state to village, extrabudgetary trust funds, equity capitals of state and municipal enterprises. Depending on the sources, the following three kinds of financing are distinguished: budget financing, self-financing and crediting[13].

As the same author mentions, two legal regimes of financing expenditures can be practiced, depending on the subjects for whom financing is provided to support their functioning, on the content and procedure of approval of financial plans based on which funds are allocated from various sources, on the content of the rights and obligations of these subjects, on the objectives of these expenditures: 1) financing of state and municipal organizations, for which property is assigned by the right of commercial supervision; 2) financing institutions and organizations, both state and municipal, which receive no revenue from their activities and financed fully from the state of local budgets, i.e. are on the estimated budget financing[14].

The issue of budget financing in Ukraine was studied not only by legal scientists but also by such economic scholars as O. Vasylyk, O. Vovchak, S. Mochernyi, V. Oparin, V. Fedosov. In O. Vasylyk's opinion, «budget financing is the provision of financial resources in the form of non-recoverable funds from budgets of various levels to legal persons for the

[12] Byudzhetno-pravove rehulyuvannya v SRSR (1975), Kyiv, p. 112.
[13] Voronova L. K. (2006) Finansove pravo Ukrayiny: Pidruchnyk, Precedent; Moya knyha, Kyiv. P. 352.
[14] Voronova L. K. (2006) Finansove pravo Ukrayiny: Pidruchnyk, Precedent; Moya knyha, Kyiv, P. 346.

development of economy, social sphere, public administration, defense etc.»[15]. A. Zagorodniy, G. Voznyuk and T. Smovzhenko in their «Financial Dictionary»[16] define budget financing as «a form of centralized allocation from the state budget of financial resources in the form of non-recoverable, non-recompensable provision of funds, investments for the development of economy, social and cultural events, defense and other public needs».

As can be seen from the economists' definitions, none of them underlines that the financing is not made by itself, but according to the legislative and regulatory legal acts of the state or local authorities. Only in the work of V. Demyanyshyn[17], an attempt is made to provide an extended definition of the notion «budget funding». V. Demyanyshyn believes that it is the total of money relations connected with the distribution and use of the resources of the centralized fund of the state and implemented by final, non-recompensable provision of budget funds to legal entities and natural persons for carrying out the activities provided for by the budget. The basis for budget financing is the approved budget and budget outlays, and the respective process is carried out under the procedure established by the Budget Code of Ukraine by the bodies of the State Treasury Service of Ukraine. This definition encompasses both the object of budget financing and its subjects, as well as the fact that all relations in this process are regulated by the Budget Code of Ukraine, although such relations are not money relations (as V. Demyanyshyn believes), but financial ones.

The provisions of the same research by V. Demyanyshyn argue in favor of such statement, specifying the features of budget financing:

− budget financing is one of the most important forms of financing budget expenditures;

− its content manifests in the non-recoverable provision of budget funds to legal entities and natural persons;

− such funds are provided to carry out the activities provided for by the budget;

− the list of these activities corresponds to the functions of the state;

[15] Vasylyk O. D., Pavlyuk K. V. (2004) Byudzhetna systema Ukrayiny: pidruchnyk, Tsentr osvitn′oyi literatury, Kyiv, P. 137.

[16] Zagorodniy A. G., Voznyuk G. L., Smovzhenko T. S. (1997) Finansovyy slovnyk, Tsentr Yevropy, Lviv, P. 47.

[17] Demyanyshyn V. (2007) Byudzhetne finansuvannya ta yoho osoblyvosti v suchasnykh umovakh. Svit finansiv, 2 (11), P. 37.

− from the part of the state, budget financing is a form of the budget mechanism, and from the part of the economic entities – one of the forms of financial support.

In addition, an active discussion goes on among Ukrainian economic scientists about the forms of budget financing; however, we should acknowledge that no consensus is seen in the economic science on the understanding of their inner essence. Some authors (O. Vasylyk[18] and V. Oparin[19]) distinguish such its forms – estimated financing; state financing of investments; provision of grants-in-aid; provision of subventions and subsidies or public funding; publicly funded loans; public transfers. Other authors name from two («net budget», «gross budget»[20]) to eight[21] forms of budget financing: estimated financing of budget programs – of the institutions, authorities, and organizations of the public sector; transfers to citizens; budget loans to legal entities; subventions and subsidies to legal entities and natural persons; budget investments to charter capitals of existing or newly created legal entities; budget loans to state extra-budgetary funds; inter-budgetary transfers (equalization subsidies, subventions, other grants); credits for foreign states. It can be seen from the stated above, that different scientists mostly duplicate the list of the forms of budget financing. The difference lays only in the level of the detailed elaboration with which different authors approach the definition of the forms of such financing.

Thus, the analysis of the scientific ideas of famous Ukrainian legal and economic scientists allows to make conclusions as to their theoretical definition. As the author of this research believes, financing is a complex of financial legal relations connected with distribution, provision, and use of resources from centralized and decentralized cash funds, whose aim is to perform functions affecting the state as a whole, functions of local self-government, and functions aimed at supporting financing of institutions (organizations, enterprises).

Budget financing is a complex of financial legal relations connected with distribution, provision, and use of resources from state and local budgets, whose aim is to perform functions affecting the state as a whole,

[18]Vasylyk O. D., Pavlyuk K. V. (2004) Byudzhetna systema Ukrayiny: pidruchnyk, Tsentr osvitn′oyi literatury, Kyiv, 139 p.

[19]Oparin V. M. (2001), Finance (General theory), KNEU, Kyiv, 122 p.

[20] Demyanyshyn V. (2007) Byudzhetne finansuvannya ta yoho osoblyvosti v suchasnykh umovakh. Svit finansiv, 2 (11), P. 55.

[21] Romanenko O. R. (2006) Finansy: pidruchnyk, Tsentr osvitn′oyi literatury, Kyiv, 172 p.

functions of local self-government, and functions aimed at supporting financing of institutions (organizations, enterprises). The main kinds of budget financing are estimated budget financing and budget crediting.

In Ukraine, the Ministry of Interior and authorized state bodies and bodies of the National Police belong to the budgetary institutions intended to satisfy the needs of the society; they take no part in the creation of the gross domestic product, therefore, there is the need in their financing from budget funds based on the estimated budgets of incomes and expenditures, which must also reflect the costs received from the authorized activities on the cost accounting basis, as public and local budget institutions (according to the current legislation of Ukraine) have the right to raise additional funds. The amount of expenditures of a budget institution provided for by its budget estimate is obligatory and cannot be amended by the institution. A budget estimate is the main document connected with the acquisition of incomes and effecting expenditures by budget institutions. It contains the following components:

general fund, displaying the amounts of revenues from the general budget fund and the distribution of expenditures according to the full economic classification of expenditures for the budget institution to fulfill its main functions or the distribution of credit allocation from the budget according to the classification of budget crediting;

special fund, containing the amount of revenues from the special budget fund for a specific goal and their distribution according to the full economic classification of expenditures for making respective expenditures in accordance with the legislation, as well as for the implementation of priority measures connected with the institution's fulfillment of its main functions, or the distribution of credit allocations from the budget according to the legislation.

Each budget institution under the management sphere of the Ministry of Interior of Ukraine draws up an estimated budget, which is also called an individual budget, and the main holder of the funds of a respective budget draws up a consolidated estimated budget of budget institutions according to the budget program. The consolidated estimated budget displays the indicators of individual estimated budgets under the budget program.

In the revenue of draft estimated budgets, planned commitment rates are indicated, which are envisaged to cover the institution's expenditures

from the general and special funds of respective draft budgets. The revenue of the general fund is formed based on the planned commitment rates allocated for sustaining this organization. When defining expenditure amounts, each institution's objective need in the funds is taken into consideration on the basis of its key performance indicators.

The requirement concerning the prioritization of the provision of budget funds for labor remuneration with accruals, as well as for the institution's maintenance, is mandatory. The indicators of expenditures included in the draft estimated budget have to be validated by respective calculations for each code of the economic classification.

Estimated budgets and allocation plans are implemented by ascending order from the beginning of the year. Reports on the implementation of estimated budgets and allocation plans are submitted according to the procedure and in the form prescribed by the State Treasury Service of Ukraine.

Therefore, financial and legal meaning of the estimated budget lies in establishing legal boundaries of financing (provision) and spending budget funds (directions, amounts, periods). An estimated budget also serves as a basis for creation, changes in, and termination of financial relations in relation to the use of the funds allocated from the budget. The duties of budget fund recipients include timely submission of relevant documents proving the right to receive budget resources; efficient use of budget funds in accordance with their intended purpose; timely submission of the report on the use of the financing.

In the process of financing, budget institutions, being budget fund recipients, enter into legal relations with the authorities (ministries, administrations etc.), to which they are accountable and which have the status of main budget holders, whose mandate includes distributing budget resources among budget fund recipients and overseeing the use thereof. The main budget holders are responsible for the intended and efficient use of the budget resources allocated to them in accordance with approved estimated budgets.

The procedure of drafting, consideration, approval and the requirements for the implementation of estimated budgets of budget institutions is regulated by the Resolution of the Cabinet of Ministers of Ukraine «On the Approval of the Procedure of Drafting, Consideration, Approval and Main Requirements for the Implementation of Estimated

Budgets of Budget Institutions» as of February 2002, No. 228 (as amended)[22].

Thus, an estimated budget, as a by-law, regulates social relations connected with the use of budget funds, but does not establish or formulates them, but only acts as an instrument of personification of legal norms for individual relations, i.e., it only applies to the subjects specifically identified. An estimated budget becomes valid as an individual financial and planning document in the case when the established forms and structure of its filling in are adhered to, as well as in the case when the financial and economic calculation of differentiated money and norms are substantiated.

The expenditure part of the estimated budget of a budget institution is drawn up in accordance with the economic classification of expenditures and includes current and capital expenditures. The main items of current expenditures of the budget are compensation for the budget institution employees; indirect labor charges (social costs); purchase of supplies and expendable materials; business travel expenses; transportation costs; communication costs; payment for utility services etc. The items of capital expenditures of the estimated budget comprise the purchase of equipment and durables; construction of permanent facilities; major structural repairs.

The grounds for expenditures by budget holders are payment orders prepared by account holders and the documents confirming the intended purpose of the respective funds (invoices, consignment bills, waybills, statement of completion of works etc.).

In 1995, a treasury system of budget implementation was introduced in Ukraine, based on the idea of introducing a treasury account when the expenditure part of the budget is executed through transferring funds from the treasury account of the State Treasury Service of Ukraine to the accounts of budget holders opened in its local bodies. Before 1995, funds had been transferred from the accounts of respective budgets to the accounts of budget holders, and earlier – before July 1993 – financing was provided by the method of opening credits (from the state budget) and by the method of transferring funds from the accounts of respective budgets to the accounts of budget holders (from local budgets). The treasury form of budget execution provides for the performance of operations with the funds

[22] Postanova Kabinetu Ministriv Ukrayiny (2002 r.) Pro zatverdzhennya Poryadku pidhotovky, rozhlyadu, zatverdzhennya ta osnovnykh vymoh do vykonannya koshtorysiv byudzhetnykh ustanov, available at: https://zakon.rada.gov.ua/laws/show/228-2002-%D0%BF.

of the state budget by the bodies of the State Treasury Service of Ukraine; provision of cash management and payment services to budget fund holders; oversight of budget authorities (upon accrual of revenues, incurrence of liabilities, effecting payments); maintenance of accounting records and drawing up reports on the execution of the state budget[23].

To date, the sources of financing state and local expenditures include not only the funds of the state and local budgets executed on the basis of a law or special decisions of local authorities, but also the funds of state (local) extra-budgetary funds and sectors of economy – equity capitals of institutions, organizations and enterprises. Thus, the Order of the Ministry of Interior of Ukraine of 15.01.2018 No. 20 (registered at the Ministry of Justice of Ukraine on January 22, 2018, No. 85/31537)[24] approves the Procedure of accumulating, re-distribution and use of the resources of the special fund from personal revenues of budget institutions belonging to the management sphere of the Ministry of Interior of Ukraine and central executive bodies whose activities are managed and coordinated by the Minister of Interior of Ukraine.

Thus, establishing the nature of the category of financing with due consideration of the domain of our research lead to the conclusion that it is the main way to fulfill expenditures on condition of non-recoverability and non-recompensability.

10.2. «Budget expenditures» as a financial and legal category

Some scientific sources provide the following definition of the notion «public expenditures»: these are the social relations regulated by the norms of law, connected with the orderly use of the state monetary resources to provide material support to the process of extended reproduction, maintenance of the social sphere, defense capacity and state administration[25].

They describe the process of using or spending the financial resources and indicate that expenditures are direct spendings of the state for its functioning, which is realized on the basis of the norms of law (a law or

[23] 29. Voronova L. K. (2009) Financial Law, Yurydychna yednist, Kyiv. P. 183.

[24] Nakaz MVS Ukrayiny (2018) Pro zatverdzhennya poryadku nakopychennya, pererozpodilu ta vykorystannya koshtiv spetsial′noho fondu z vlasnykh dokhodiv byudzhetnykh ustanov, shcho nalezhat′ do sfery upravlinnya MVS Ukrayiny ta tsentral′nykh orhaniv vykonavchoyi vlady, diyal′nist′ yakykh spryamovuye i koordynuye Ministr vnutrishnikh sprav Ukrayiny, available at: https://xn--80aagahqwyibe8an.com/mvs-ukrajini-nakazi/nakaz-mvs-ukrajini-vid-15012018-pro-343635.html.

[25] Alisov E. A. (2000) Finansove pravo Ukrayiny, Espada, Harkiv, 288 p.

decision for the respective budget year) in accordance with the budget classification, whose main purpose is to ensure the appropriate drafting and execution of budgets of all levels, as well as the comparability of their indicators. Such classification provides for the division of expenditures on the basis of the functional, institutional and economic features; it establishes, in particular, the general amount of expenditures, the subjects of financing, the amount of financing of separate measures.

Besides, scientific literature rightfully views expenditures as a process of allocation and use of financial resources of budgets of various levels and extra-budgetary funds. This means that expenditures financed on the territory of the state are covered by the net income of the society from diverse cash funds, – both budgetary and non-budgetary.

It has been traditionally believed that the notion «state expenditures» is wider than the notion «state budget expenditures». Although state budget expenditures are a constituent part of the state expenditures, they remain just a part of general public expenditures of the state, which, besides budget expenditures, include extra-budgetary expenditures. The system of budget expenditures depends on the political and socio-economic situation in the state.

As Professor L. Voronova rightly stressed, expenditures of the state and local budgets are an objective economic category. They have a dual character: on the one hand, they are the state spendings, on the other hand, they are the revenues of the state institutions, organizations, and enterprises which constitute cash funds necessary for functioning. The scientists has defined the expenditures of the state and local budgets as direct planned expenses of the state and local authorities based on financial and legal norms and connected with their functioning, which are covered at the expense of allocation of financing and independent of their directions are realized on the basis established by the state[26].

In the author's opinion, studying the financial and legal form of the notion «expenditures», it is not entirely possible to agree that they are the state's spendings. I am more prone to believe that in the material sense, it is more practical to view expenditures as allocations, and in the legal sense – at social relations regulated by the norms of law, connected with the realization of such allocations.

[26] Voronova L.K. (2008) Finansove pravo Ukrayiny: Pidruchnyk, NORMA, Moscow, P. 34.

As for the notion «expenditures» in the Central European countries, Polish scientific literature[27] defines the notion of «public expenditures» as a financial reflection of public goals (provided for by the legislation or guaranteed by the Constitution of the Polish Republic) implemented by the governmental and local authorities. Both in Ukraine and in Poland, they are classified depending on the functions of the state (for defense, internal security, sustaining the authorities and courts); into state and local; into ordinary (provide for the financing of current activities) and extraordinary (provide for the financing of special missions: investment projects, reimbursement of public sector debt, purchase of real estate etc.). According to the economic classification, expenditures in Poland are divided into current and investment ones, as well as into external transfers (social transfers, grants etc.) and internal transfers (provide only for the change of fund holders of public funds at a constant amount of public resources, – grants from the state budget to local authorities and special-purpose funds). In Poland, expenditures are also divided into non-recoverable (most of them belong to this category) and recoverable (guarantees, loans, and credits provided by the state).

In Czech scientific literature[28], the notion of state expenditures is defined as the flow of funds of the state budget allocated for the implementation of the system of the state fiscal functions under the principle of non-recoverability and non-recompensability. In the Czech Republic, state expenditures are aimed to finance the government, defense, security, judicial system etc. Expansion of the State's activities gave rise to the expenditures for social, educational, cultural, environmental and other goals. The government of this country can also implement separate projects with the aim of developing certain enterprises, sectors or kinds of economic activities.

In the same country, so-called «social spending programs» are common, which have certain goals and foresee an implementation procedure and schedule, and are even composed of separate projects. They are directed at the development of separate regions or support of specific projects (such as the development of new technologies, communications etc.). These programs and projects are also financed at the costs from the state budget, but received within the framework of budgets of international

[27] Praca zbiorowa pod redakcja naukowa JANUSZA OSTASZEWSKIEGO FINANSE (2008) Centrum Doradztwa i Informacji sp. z. o. o., Warszawa.

[28] Hamernikova B., Maaytova A. (2007) Verejne finance. ASPI, Praha, 364 p.

structures. In contrast to state expenditures financed during one year, social spending programs can be short-, medium-, and long-term[29].

In the context of social spendings in the Czech Republic, state expenditures and transfers are separated. The first ones are divided into the expenditures of the state budget and local budgets, as well as the expenditures of the state enterprises. Like in Ukraine and Poland, a functional and economic classification of state expenditures exists in the Czech Republic[30].

In Germany, the main link of the budget system is the budget, whose structure, like the budget process, corresponds to the federal nature of the state structure. Revenues and expenditures of three levels of administrative governance are included in the state budget – or the federal level (central budget), land level (regional budgets) and community level (local budgets). The consolidated state budget is received by summing up the revenues and expenditures of all three levels, net of inter-budgetary transfers (subsidies, grants). Like in Ukraine, a functional and sector classification of expenditures and their division into current and capital ones exist in Germany.

Considering the information outlined above, and to provide a single approach to defining the notion under consideration, and as a conclusion of the conducted research, the following definitions will be relevant:

− expenditures are social relations connected with the allocation (transfer) of financial resources from budgets of various levels, extra-budgetary funds, revenues of legal entities and natural persons, owned by them or possessed by them;

− public expenditures – social relations regulated by the norms of law, which concern the fulfilling by the state, local self-government bodies, state non-budgetary funds and other organizational institutions of allocations from centralized and decentralized cash funds with the aim of realizing the state public interests;

− state (local) expenditures – social relations regulated by the norms of law, which concern the fulfilling by the state or local authorities of allocations from mobilized centralized cash funds to ensure the implementation of the aims and functions of the state and local authorities,

[29] Hamernikova B., Maaytova A. (2007) Verejne finance. ASPI, Praha, P. 63.
[30] Praca zbiorowa pod redakcja naukowa JANUSZA OSTASZEWSKIEGO FINANSE (2008) Centrum Doradztwa i Informacji sp. z. o. o., Warszawa, P. 62.

which are effected under the principles of non-recoverability and non-recompensability.

In accordance with the norms of the Budget Code of Ukraine of June 8, 2010, No. 2456-VI[31], budget expenditures are the funds directed at implementing programs and measures provided for by a respective budget. Budget expenditures do not include: reimbursement of debt; granting of credits from the budget; placement of budget funds on deposits, buying securities; reimbursement of the amounts of taxes and fees (obligatory payments) and other fiscal revenues paid to the budget in excess, their compensation from the budget. Budget spendings, but its norms, are budget expenditures, granting of credits from the budget, reimbursement of debt and placement of budget funds on deposits, buying securities.

As per Article 10 of the same Code, expenditures and budget crediting are classified by:

1) the budget programs (program classification of expenditures and budget crediting);

2) the feature of the main holder of budget funds (classification of expenditures by institutions and budget crediting);

3) the functions, with the fulfillment of which expenditures and budget crediting are connected (functional classification of expenditures and budget crediting).

The program classification of expenditures and budget crediting is employed when management by objectives is used in the budgeting process, and is formed by the Ministry of Finance of Ukraine (local financial body) based on the proposals submitted in budget requests by main budget holders (in the case under consideration − by the Ministry of Interior of Ukraine) when drafting the Law on the State Budget of Ukraine (decision on the local budget).

Program classification on expenditures and local budget crediting is formed with due consideration of the model program classification of expenditures and local budget crediting approved by the Ministry of Finance of Ukraine.

The classification of expenditures by institutions and budget crediting contains the list of mail budget fund holders to systematize expenditures and budget crediting according to the main budget fund holder.

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[31]Verkhovna Rada of Ukraine (2010) Byudzhetnyy kodeks Ukrayiny, available at: https://zakon.rada.gov.ua/laws/show/2456-17.

Based on the classification of expenditures by institutions and budget crediting, the State Treasury Service of Ukraine composes and maintains the single register of budget fund holders and budget fund recipients.

The main budget holders define the network of lower-level budget holders and recipients of budget funds with the consideration of the requirements for forming the singer registry of budget holders and budget fund recipients and the data of such registry.

Like in Ukraine, in most of the Central European countries, the classification of budget expenditures is based on the principle of their division into current and capital expenditures.

The textbook «Financial Law» under the general editorship by professor L. Voronova[32] also classifies expenditures by the character of their participation in social production (fixed assets, circulating assets, reserves) and their role in social production (for the development of material production, for non-material sphere).

Expenditures are made through registration and special registration accounts of budget holders, opened for each budget year for receiving funds from the budget, accounting for budget funds and overseeing their use in the bodies of the State Treasury Services of Ukraine.

Considering that the methodology of researching any scientific problem foresees conducting a detailed analysis of basic categories and notions, as well as that in the financial law science, the provision on the crucial significance of the use of the category «budget expenditures» alongside with the category «public expenditures» has already been justified, we will introduce our own notion of «budget expenditures» as planned funds (funds from the state and local budgets) allocated in accordance with the current legislation for the implementation of specific measures or programs connected with ensuring the fulfillment of goals and functions of the state and local authorities – guarantees of constitutional order of the state, independent courts, defense capacity and local self-government, development of socio-cultural sphere etc.

The conducted research demonstrated that the main task of the legal regulation of the relations in the sphere of expenditures is to mediate the rational and orderly process of application of resources of cash funds, as it is through the legal norms that we can ensure the mode of planned, economical and efficient spending of financial resources.

[32] Voronova L. K. (2009) Financial Law, Yurydychna yednist, Kyiv. P. 125.

10.3. Legal regulation of management by objectives in the budgeting process

The version of the Budget Code of Ukraine of July 8, 2010 No. 2456-VI defines management by objectives in the budgeting process as its main method. The norm of Article 20 of the Code foresees drafting and implementing the budget with a breakdown into budget programs. The implementation of the management of the budget by objectives is a significant change in the budget ideology. Forming the budget by management of objectives provides for factoring in the available resources used to reach certain results in the public sector, i.e., it provides for identifying the results which need to be reached in the public sector, with subsequent identification of what resources need to be used to reach these results.

In the analytical plan, management by objectives introduces the important elements of analysis of comparison of expenditures and obtained results into the budgeting process. This analysis is a tool of program evaluation ensuring the approval and implementation in the budget sphere of those programs whose implementation results will exceed the expenditures therefore.

Management by objectives in the budgeting process forms a reporting and evaluation system, provides a higher level of transparency of decision-making in the public sector: preference is given not to the need in funds to support budgetary institutions, but to the results to be received as a result of their use.

Among the advantages of management by objectives, we highlight the transparency of the budgeting process (clear definition of the goals and tasks for the fulfillment of which budget funds are spent), increasing the level of control over the implementation of budget programs; evaluation of the activities of the budget process actors against the goals set and the analysis of the causes of inefficient implementation of budget programs; harmonization of the organization of activities and strengthening the responsibility of the main budget holder in terms of forming and implementing budget programs; increasing the quality of budget policy development and efficiency of budget funds distribution and use.

When using management of budget expenditure financing by objectives, an important stage is forming budget programs, which includes development, analysis, and selection of programs necessary to be

implemented by main budget holders to reach the goals defined at the state of strategic planning in program and forecasting documents. At this stage, main budget holders together with branch administrations of the Ministry of Finance of Ukraine develop programs which they have to implement according to the government's program and forecasting documents, set clear goals and specific tasks and timelines for their implementations (programs may be one-year or long-term ones).

The main budget holders, on the basis of their short – and mid-term activity plans, distribute human, material and other resources necessary for the implementation of a certain budget program, conduct its cost estimate, bring it in line with the budget resources. As a result, a budget request is submitted to the Ministry of Finance of Ukraine for a respective program to be included in the budget. At the same time, the amount of expenditures for a respective budget program is defined on the basis of the results of the main budget holder's work in the previous and current years, evaluation of its short– and mid-term activity plan for its correspondence to the government's program and forecasting documents, expected results of the program implementation for the planned and following years, boundary amounts of expenditures of the main holders validated by the Ministry of Finance of Ukraine.

The name of the budget program reflects its essence. The name of each code of program classification is the same, and a budget program code consists of seven digits, of which: the first, second and third define the main budget holder (a respective code of the classification of budget expenditures by institutions); the fourth defines the responsible executing agency for the implementation of budget programs of the main budget fund holder (if the responsible executing agency is a structural division of the central office of the main budget fund holder, digit 1 is used; for all other responsible executing agencies, digits from 2 to 9 are used); the fifth and sixth digits define the budget program, the implementation of which is provided by one responsible executing agency. If the program is connected with sustaining the administration of the state power bodies, digits 01 are used; for all other budget programs – from 02 on, depending on the number of the budget program of one responsible executing agency; the seventh digit defines the direction of activities in the specific budget program (digits from 1 to 9).

Linkage of the code of a specific budget program to the respective code of the functional classification of budget expenditures is used to draw

up a consolidated budget, carry out macro-economic analysis, form the state policy in the sphere of economy, enable international comparisons of expenditures by their functions. Making expenditures on the basis of international programs requires the appointment of their specific responsible executing agencies.

A responsible executing agency of a budget program is a legal entity appointed by the main budget holder with a written approval with the Ministry of Finance of Ukraine at the state of drafting the State Budget for the upcoming year, which has a separate account and an accounting balance-sheet. The responsible executing agency of the budget program ensures the execution and bears responsibility for the execution of one or several budget programs.

The use of performance indicators allows to clearly demonstrate the efficiency of the budget fund spending, correlation of the achieved results and spendings, duration of the budget program implementation, its necessity and conformance with the defined goal and allows to compare the results of budget programs implementation over time and between the main budget holders, and specify the most effective budget programs when allocating budget resources.

Performance indicators of budget program implementations are divided into the following groups: spending indicators describe the amounts and structure of the resources ensuring the budget program implementation; product indicators are used to evaluate the achievement of the set goals; efficiency indicators are defined as the ratio of the number of manufactured products (executed works, provided services) to their monetary or human value (spending of resources for one unit of a product indicator); quality indicators reflect the quality of the manufactured products (executed works, provided services).

Another important stage of budget programs forming is drawing up a passport of a budget program. From the scientific point of view, a passport of a budget program can be defined as a list of systematized measures aimed at reaching a common goal and tasks, the implementation of which is proposed and fulfilled by budget holders in accordance to the functions entrusted to them, used in forming the budget through management by objectives. The passport of a budget program contains: 1) the name of the main holder, the responsible executing agency of the budget program; 2) the amount of the budget allocation, including from the general and special funds; 3) legal grounds for executing the budget program and its aim; 4) the directions of activities under the budget program;

5) expenditures and their distribution over the territories; 6) the list of the state special-purpose programs implemented within a budget program; 7) performance indicators characterizing the implementation of the budget program: spendings, product, efficiency.

The procedure of development of a passport of a budget program is regulated by the Order of the Ministry of Finance of Ukraine «About Passports of Budget Programs» of December 29, 2002 (as amended), registered by the Ministry of Justice of Ukraine on January 21, 2003, №. 47/7368[33].

10.4. The state of financing the bodies of the Ministry of Interior of Ukraine

According to the laws of Ukraine on the State Budget, financing of the following main budget programs is provided for annually for the Ministry of Interior of Ukraine:

Administration and management of the activities of the Ministry of Interior of Ukraine;

Implementation of the state policy in the sphere of internal affairs, ensuring the performance of tasks and functions of the bodies, institutions and agencies of the Ministry of Interior of Ukraine;

Training of the staff by higher education institutions with specific learning environment;

Medical support of the staff of the Ministry of Interior of Ukraine, policemen and policewomen and the staff of the National Police of Ukraine;

Scientific and informational and analytic support of the measures to fight organized crime and corruption;

State support of the fitness and sports society «Dynamo» of Ukraine and the organization and performing of the works to develop fitness and sports among the staff and servicemen and servicewomen of law enforcement bodies;

Expenditures for the Ministry of Interior of Ukraine for the implementation of measures to increase the state's defense capacity and security;

Administration and management in the sphere of security of the national border of Ukraine;

[33] Ministry of Finance of Ukraine (2002) Pro pasporty byudzhetnykh prohram, available at: https://zakon.rada.gov.ua/laws/show/z0047-03.

Logistic support of the State Border Guard Service of Ukraine and maintenance of its staff;

Provision of training for the staff and in-service education by the National Academy of the State Body Guard Service of Ukraine;

Construction (purchasing) of housing for servicemen and servicewomen of the State Border Guard Service of Ukraine;

Intelligence activities in the sphere of the state border security;

Measures to provide technical infrastructure development of the border;

Expenditures for the Administration of the State Border Guard Service of Ukraine for the implementation of measures to increase the state's defense capacity and security;

Implementation of the project to modernize automated systems of border control;

Administration and management of the National Guard of Ukraine;

Supporting operations and functions of the National Guard of Ukraine;

Provision of training of the staff for the National Guard of Ukraine by higher education institutions;

In-patient treatment of servicemen and servicewomen of the National Guard of Ukraine in the ministerial medical facilities;

Construction (purchasing) of housing for servicemen and servicewomen of the National Guard of Ukraine;

Expenditures for the National Guard of Ukraine for the implementation of measures to increase the state's defense capacity and security;

Administration and management in the sphere of migration, citizenship and registration of natural persons;

Supporting operations and functions in the sphere of citizenship, immigration and registration of natural persons;

Contributions to the International Organization for Migration. The amounts of MIU financing from the State Budget of Ukraine during 2016-2019, calculated using management of budget expenditure planning by objectives, are given in the table (Table 1).

Table 1

Amounts of financing of expenditures of the MIU and Ministry of Defense of Ukraine for 2016-2019 from the State Budget of Ukraine

billion UAH

Indicators /years	Total expendit ures of SB	MIU	share in the total amount of expenditures, %	National Guard	National Police	Ministry of Interior	share in the total amount of expenditu res, %
2016[34]	647.2	40.2	6.21	8.6	15.7	54.9	8.48
2017[35]	768.0	48.2	6.28	8.9	19.7	62.5	8.14
2018[36]	906.0	60.1	6.63	9.9	24.3	82.2	9.07
2019[37]	1005.8	72.4	7.2	11.6	29.5	101.1	10.06

Among the main expenditure items under the program classification (which is calculated as a part in the total sum of expenditures for MIU in 2019), it is necessary to specify the following: The implementation of the state policy in the sphere of internal affairs, supporting the operations of the bodies, institutions and agencies of the Ministry of Interior of Ukraine (5.6 %), logistic support of the State Border Guard Service of Ukraine and maintenance of its staff (12.8 %), Supporting operations and functions of the National Guard of Ukraine (14.2 %), Supporting the operations of the civil defense forces (14.8 %), Supporting the operations of the divisions, institutions and agencies of the National Police of Ukraine (39.6 %).

From the table data, it can be seen that the share of the expenditures for the MIU in the total sum of expenditures of the State Budget of Ukraine has always grown and in 2016-2018 exceeded 6 % − it is only 2 % less the amount of expenditures for financing the Ministry of Defense of Ukraine, which, considering the Joint Forces Operation sustained in the East of Ukraine is not entirely logical.

At the same time, one of the functions of the MIU and those executive bodies whose activities are coordinated through the Minister of Interior of Ukraine is ensuring national security and defense. The amount of such

[34] Verkhovna Rada of Ukraine (2016). Pro Derzhavnyy byudzhet Ukrayiny, available at: https://zakon.rada.gov.ua/laws/show/928-19.

[35] Verkhovna Rada of Ukraine (2017) Pro Derzhavnyy byudzhet Ukrayiny, available at: https://zakon.rada.gov.ua/laws/show/1801-19.

[36] Verkhovna Rada of Ukraine (2018) Pro Derzhavnyy byudzhet Ukrayiny, available at: https://zakon.rada.gov.ua/laws/show/2246-19.

[37] Verkhovna Rada of Ukraine (2019) Pro Derzhavnyy byudzhet Ukrayiny, available at: https://zakon.rada.gov.ua/laws/show/2629-19.

expenditures planned for 2019 is nearly 205 billion UAH distributed between 14 budget holders: the Ministry of Defense of Ukraine 49.6 %, the National Police of Ukraine 14.4 %, the State Emergency Service of Ukraine 6.6 %, the National Guard of Ukraine 6.1 %, the Office of the Ministry of Interior of Ukraine 5.7 %, the Administration of the State Border Guard Service of Ukraine 5.3 %, the Security Service of Ukraine 4.6 %, other seven budget holders − 7.7 %[38]. At the same time, both for the National Police and the National Guard, expenditures for the implementation of measures to increase the state's defense capacity and security per se are foreseen from the Special Fund of the State Budget of Ukraine, which in a country at war, again, seems illogical.

Thus, the largest proportion of the financial resources allocated to the MIU from the State Budget is provided to the National Police (around 40 %), which constitutes 30 % of the total defense budget of Ukraine. At the same time, the situation in Ukraine is characterized by an upsurge of crime, loss of citizen's trust to the law enforcement system, a low level of public order. To date, the crime situation in the country remains complicated: cases of robbery, unlawful appropriation of vehicles, armed assaults on housing and shopping facilities have become more common. This situation can be put down to – exacerbation of the economic situation in the country, lowering of the living standards, the conflict in Donbas, a significant and uncontrolled circulation of illegal arms.

In the rating compiled by the specialists of the World Economic Forum, Ukraine got to the list of the countries with the highest level of organized crime in the world. It ranked 113 in the list of 137 countries. According to the rating, in the group of countries with the highest level of organized crime, Ukraine neighbors countries from South and Latin America and Africa. The rating is topped by El Salvador, Honduras, and Venezuela[39].

Based on the results of the Accounting Chamber of Ukraine, the efficiency of the National Police's operation (in spite of the constantly growing amount of budget expenditures) are significantly influenced by such factors as the lack of financial resources, staff turnover, especially in patrol police divisions, low levels of provision with protective gear,

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[38] Rakhunkova palata Ukrayiny (2018 r.) Vysnovky shchodo proektu Zakonu Ukrayiny "Pro Derzhavnyy byudzhet Ukrayiny na 2019 rik", available at: http://www.ac-rada.gov.ua/doccatalog/document/16757581/Vysn_proekt_DBU_2019.pdf?subportal=main.

[39] Riven′ zlochynnosti v Ukrayini ye odnym z nayvyshchykh u svitovomu reytynhu, available at: https://24tv.ua/riven_zlochinnosti_v_ukrayini_ye_odnim_iz_nayvishhih_u_sviti__reyting_n894441

computer equipment, inappropriate state of the vehicles etc. Since the moment of creation of the patrol police in Ukraine and acceptance into service of 13 thousand policemen and policewomen, during 2016-2017, 1944 policemen and policewomen, i.e., every seventh[40], resigned from their position for various reasons, which leads to lower efficiency of performing the tasks in the spheres of providing protection to human rights and freedoms, combating crime, supporting public order and security.

The vagueness of the general structure and headcount of the National Police, charging it with such functions foreign to it as maintenance of pre-school and children's recreational institutions, creation, in parallel with the MIU, of training centers for police forces, lead to dissipation of budget funds[41].

The consequence of misjudgments in defining the need in the funds to pay for public utilities and energy, inappropriate validation of limits and the lack of proper control over their observation was that based on the results of 2016-2017, the balance of appropriations of the general fund of the state budget was created, which were provided for energy supplies and public utilities, in the amount of 9.7 million UAH, which were not used and at the end of the year were returned to the state budget. In total, within two years, 14.7 million UAH of general fund assignments were not disbursed and returned to the state budget (12.8 million UAH in 2016, 1.9 million UAH in 2017). Unsubstantiated managerial decisions approved by decision-makers of various levels led to inefficient use of budget funds, sometimes with the breach of the current legislation[42], e.g., in 2016-2017, 71.1 million UAH were spent in non-compliance of the current legislation, 9.2 million UAH were spend inefficiently, and budget legislation was breached when planning expenditures for 500 thousand UAH[43].

[40] Rakhunkova palata Ukrayiny (2018) Zvit pro rezulʹtaty audytu efektyvnosti vykorystannya byudzhetnykh koshtiv, vydilenykh na pidtrymku diyalʹnosti pidrozdiliv, ustanov ta zakladiv Natsionalʹnoyi politsiyi Ukrayiny, available at: http://www.ac-rada.gov.ua/doccatalog/document/16756240/zvit_10-2_2018.pdf?subportal=main, P. 16.

[41] Rakhunkova palata Ukrayiny (2018) Zvit pro rezulʹtaty audytu efektyvnosti vykorystannya byudzhetnykh koshtiv, vydilenykh na pidtrymku diyalʹnosti pidrozdiliv, ustanov ta zakladiv Natsionalʹnoyi politsiyi Ukrayiny, available at: http://www.ac-rada.gov.ua/doccatalog/document/16756240/zvit_10-2_2018.pdf?subportal=main, P. 19.

[42] Rakhunkova palata Ukrayiny (2018) Zvit pro rezulʹtaty audytu efektyvnosti vykorystannya byudzhetnykh koshtiv, vydilenykh na pidtrymku diyalʹnosti pidrozdiliv, ustanov ta zakladiv Natsionalʹnoyi politsiyi Ukrayiny, available at: http://www.ac-rada.gov.ua/doccatalog/document/16756240/zvit_10-2_2018.pdf?subportal= main, P. 24.

[43] Rakhunkova palata Ukrayiny (2018) Zvit pro rezulʹtaty audytu efektyvnosti vykorystannya byudzhetnykh koshtiv, vydilenykh na pidtrymku diyalʹnosti pidrozdiliv, ustanov ta zakladiv Natsionalʹnoyi politsiyi Ukrayiny, available at: http://www.ac-rada.gov.ua/doccatalog/document/16756240/zvit_10-2_2018.pdf?subportal=main, P. 35.

CONCLUSIONS

1. The Ministry of Interior of Ukraine is a powerful law enforcement agency, coordinating numerous subdivisions, which are important for state security and defense. Its activities are financed from the State Budget of Ukraine according to the method of management by objectives. The use of budget funds allocated for the MIU during the previous four years, on the whole, corresponded to the main goal of its reforming, namely creation of a European-type authority.

2. Management of budget expenditure planning by objectives is an efficient tool of economizing budget funds; however, as evidenced by practice, and the data cited in the article, the amounts of the resources allocated for covering the expenditures depend neither on the GDP level, nor on the level of the development of the state economy, nor on the expenditure priority (e.g.: poverty reduction, financing of education or healthcare spheres), or other economic education, but only on the political will.

3. In spite of sufficient amounts of financing, in particular, of the National Police of Ukraine, managerial miscalculation led to substantial negative consequences. In particular, based on the results of the audit conducted by the Accounting Chamber of Ukraine, cases of mismatch between the actual performance indicators and the management reporting data were identified, which did not minimize the risks of occurrence of breaches and abuses in case of planning and using budget funds through the management of budget expenditure planning by objectives.

4. In practice, the current policy of budget financing of the MIU comes down to on-the-spot resolution of outstanding issues connected with its reforming and does not reflect the strategy of its further activities.

5. To upgrade the contents of passports of budget programs and reports on the completion thereof, we propose to ensure the reliability and accuracy of calculations of separate performance indicators (foreseen by items 6-7 of the General Requirements for defining performance indicators of budget programs approved by the Order of the Ministry of Finance of Ukraine of 10.12.2010 No. 1536, registered in the Ministry of Justice of Ukraine on 27.12.2010 with No. 1353/18648 (in the version of the Order of 15.06.2015 No. 553))[44]. In particular, such indicators must be defined not on the level of report indicators of the previous year, as is commonly

[44] Ministry of Finance of Ukraine (2010) Zahal′ni vymohy do vyznachennya pokaznykiv efektyvnosti byudzhetnykh prohram, available at: https://zakon.rada.gov.ua/laws/show/z1353-10.

practiced currently, but on the basis of confirmed absolute calculation of expected results of the work.

SUMMARY

The article discloses theoretical foundations of such notions of financial and legal science as «financing», «budget expenditures», management by objectives in the budgeting process and their legal regulation in the legislative and regulatory legal acts of Ukraine. On the basis of the data of Annex 3 to the Law of Ukraine «On the State Budget» for 2016−2019, the amounts of funding of the Ministry of Interior of Ukraine and the bodies whose activities are coordinated by the Cabinet of Ministers of Ukraine through the Minister of Interior of Ukraine, have been analyzed. The results of such analysis helped to highlight the problems existing in this sphere, in particular, concerning situational solving of the problems connected with reforming thereof, and not with the strategy of its further operations, and defining the main directions of overcoming them in perspective, in the first place, through providing reliable and accurate calculation of performance indicators, which have to be defined not on the level of the report indicators of the previous year, but on the basis of proven absolute calculations of expected performance indicators.

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CHAPTER 11
METHODOLOGICAL APPROACHES TO STUDY THE CATEGORY OF CRIMINAL MISDEMEANOR IN CRIMINAL-LEGAL DOCTRINE

Fedotova H. V.

INTRODUCTION

At the present stage of development of Ukraine, the fundamental changes in the socio-political and other conditions of social and public life, as well as the current provisions of the Constitution of Ukraine, have predetermined reforming of the criminal law system towards its further democratization, humanization, strengthening of the protection of human rights and freedoms in accordance with the requirements of international legal acts and commitments of our state to the European and world community.

In Ukraine, contemporary development of criminal law study convincingly testifies that new searches for scientific support for the formation and implementation of criminal-legal policy are not substantiated comprehensively enough.

Doctrinal studies of proper regulation of legal relations in counteraction to crime by methods of criminal law require in-depth theoretical and methodological approaches to substantiate the essence of individual elements of the criminal law subject. Consequently, the formation and development of new scientific perspectives regarding the essence and purpose of the domestic state policy, which determines the objectives, main areas, means of influencing crime.

One of such scientific novelties is a criminal misdemeanor, that is, a legal phenomenon that requires holistic and comprehensive scientific development of theoretical foundations to implement it in practice as a criminal law means of countering crime.

In order to reveal theoretical issues regarding a criminal misdemeanor, the concept (theoretical basis) for introducing this act into the law on criminal liability should be justified. The concept is considered as a system of views, a system of describing a particular subject or phenomenon in

relation to its structure, functioning that contribute to its understanding, interpretation, study of the main ideas. The concept is extremely important, since it is a single, decisive notion, the main idea of scientific research.

11.1. The System of Fundamental Scientific Perspectives regarding the Concept of Criminal Misdemeanor

In most European countries, criminal law provides for two or even three types of criminal acts subject to punishment (crime – misdemeanor –offence). Therefore, Europe has long recognized that the existence of more than one single type of act subject to punishment (crime) in criminal law [1].

In domestic legislation, an approach differs in some way. Thus, in the current Criminal Code of Ukraine, the crimes are classified according to the degree of their social danger (crimes of minor, medium gravity, grave and especially grave). The degree of social danger, together with the standard sanction, became the criterion for this classification.

Moreover, despite varying degrees of crime gravity, persons found guilty of committing them are correspondingly subject to a conviction. This approach is reasoned by the fact that the guilty person shall undergo punishment and other legal restrictions.

However, in other countries, the legal regulation of criminal liability is more humane.

Analysis of the practice of legislating in the field of criminal law enabled scientists to conclude that its evolutionary development is one-sided, namely, in the direction of criminal reprisals for various types of crimes[1]. In criminal policy, the trend of criminalization and penalization has been reflected in the legislated amendments and additions to the Criminal Code of Ukraine during the specified period, while most of them enable to evaluate the one-sided orientation to solving social problems and tasks of strengthening the rule of law, mainly by strengthening the intensity of criminal law influence. This approach has remained, despite ongoing concern at the State level of ensuring guarantees of human rights and freedoms and the construction of a European criminal justice system.

The necessity to revise domestic forms of legal responsibility towards their humanization and comprehensive protection of the rights and

[1] Balobanova D. O. Zahalna kharakterystyka osnovnykh tendentsii kryminalnoi zakonotvorchosti v Ukraini (2002–2012 rr.) [General characteristics of the main trends of the criminal law-making in Ukraine (2002-2012). (2002-2012)] / D. O. Balobanova. *Aktualni problemy derzhavy i prava [Current problems of state and law].* Retrieved from http://www.apdp.in.ua/v69/23.pdf. (in Ukrainian).

freedoms of citizens is repeatedly underlined in recommendations of the European Court of Human Rights (hereinafter – the ECHR)[2], because Ukraine has recognized its practice as a source of law [3] and its priority over national legislation.[4].

For example, according to its decisions, to define an act as a crime or other type of offense depends not only on its place in the national legal system, but also on the nature of the act committed and the degree of restrictions on the rights and freedoms of the person that are determined by the type of penalty (punishment)[5].

Therefore, the distribution of the criminal law standards of certain country or international organizations into the legal framework of Ukraine is a rather painstaking and problematic process.

Moreover, the inclusion of new provisions in the Criminal Code of Ukraine raises a number of problems with respect to making them consistent with the existing criminal law provisions, as well as in relation to their compliance with changes in the CPC of Ukraine, in the CAO of Ukraine and other legislative acts.

For the first time, at the State level, the idea of introducing a criminal misdemeanor was announced by the National Commission for the Strengthening of Democracy and the Rule of Law (an advisory body under the President of Ukraine, created by the Decree of the President of Ukraine no. 1049 of July 5, 2005)[6], which stated the priority of creating a democratic system of criminal justice. According to the members of the commission, this activity should be systematic and involve an integrated

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[2] Council of Europe, Committee of Ministers of the Council of Europe. (2004). Rekomendatsiia Rec(2004)6 Komitetu ministriv Rady Yevropy derzhavam-chlenam «Shchodo vdoskonalennia natsionalnykh zasobiv pravovoho zakhystu» [Recommendation Rec (2004) 6 of the Committee of Ministers of the Council of Europe to member states "On the improvement of national remedies"] (Recommendations, International document no. Rec(2004)6 of May 12, 2004). Retrieved from http://zakon4.rada.gov.ua/laws/show/994_718. (in Ukrainian)

[3] Pro vykonannia rishen ta zastosuvannia praktyky Yevropeyskoho sudu z prav liudyny [On the fulfillment of decisions and application of the practice of the European Court of Human Rights]. (The Law of Ukraine no. 3477-IV of February 23, 2006). *Vidomosti Verkhovnoi Rady Ukrainy [Bulletin of the Verkhovna Rada of Ukraine], 30,* 260. (in Ukrainian)

[4] Pro mizhnarodni dohovory Ukrainy [On international treaties of Ukraine] (Law of Ukraine no. 1906-IV of June 29, 2004). *Vidomosti Verkhovnoi Rady Ukrainy [Bulletin of the Verkhovna Rada of Ukraine]*, no. 50, 2004. P. 540. (in Ukrainian)

[5] Rishennia Rady Yevropy, Yevropeyskyi sud z prav liudyny [The Decision of the Council of Europe, European Court of Human Rights] (Case 'Hurepka vs Ukraine' of September 06, 2005, Appeal no. 61406/00). Retrieved from http://www.justinian.com.ua/article.php?id=2643http://zakon4.rada.gov.ua/laws/show/980_437. (in Ukrainian)

[6] Pro Natsionalnu komisiiu iz zmitsnennia demokratii ta utverdzhennia verkhovenstva prava [On the National Commission for the Strengthening of Democracy and the Rule of Law] (The Decree of the President of Ukraine no. 1049 of July 5, 2005). Retrieved from http://zakon0.rada.gov.ua/laws/show/1049/2005. (in Ukrainian)

and interrelated change of the three components: criminal law – criminal procedure – institutionalization of the pre-trial investigation bodies and other bodies that ensure the rule of law.

The National draft concept of State policy in criminal justice[7], developed by the National Commission, provides for an important change in criminal law, such as the introduction of the criminal misdemeanor institution within the framework of democratization, humanization, strengthening of the protection of human rights and freedoms in accordance with the requirements of international legal acts and obligations of our country towards the European and world community.

Simultaneously, the members of the working group of the Centre for Political and Legal Reforms for future development of administrative responsibility (well-known domestic representatives of the administrative-legal science) also stated the necessity of introducing criminal misdemeanors. Proposals regarding criminal misdemeanors were outlined in the provisions of the draft Concept of the reform of administrative responsibility institution[8,9]. The main idea of the reform project was to «purify» administrative responsibility by defining as administrative delicts only those acts that cause public harm in public administration. According to the representatives of the administrative-legal study, the procedure for prosecution for administrative misdemeanors should not have criminal law characteristics and provide measures such as administrative apprehension, bringing a person, search, etc.; confiscation, correctional labor and arrest cannot be administrative sanctions, since they are of a criminal law nature. This concept has not been further developed.

The draft Concept has been developed rapidly, and the draft Concept of State policy in criminal justice, presented on October 16, 2007 at a meeting of the National Commission for the Strengthening of Democracy and the Rule of Law, received a generally positive assessment.

On February 15, 2008, the revised draft Concept was considered at a meeting of the National Security and Defense Council of Ukraine. Upon

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[7] Proekt Kontseptsii derzhavnoi polityky u sferi kryminalnoi yustytsii [The National draft concept of State policy in criminal justice]. Retrieved from http://www.justinian.com.ua/article.php?id=2643.

[8] Proekt Kontseptsii reformuvannia instytutu administratyvnoi vidpovidalnosti [The draft Concept of the reform of administrative responsibility institution]. Retrieved from http://pravo.org.ua/ua/news/2584. (in Ukrainian)

[9] *Kryminalnyi kodeks Ukrainy 2001 roku: problemy zastosuvannia i perspektyvy udoskonalennia [The Criminal Code of Ukraine 2001: Problems of application and prospects of improvement]: Proceedings from International Scientific and Practical Conference*. (Lviv, April 13-15, 2007). L.: Lviv State University of Internal Affairs, 2007. Part 1, pp. 189–194. (in Ukrainian)

consideration, on April 8, 2008, the President of Ukraine issued the Decree «On the decision of the Council of National Security and Defense of Ukraine «On the process of reforming the criminal justice system and law enforcement bodies» no. 311 of February 15, 2008 (hereinafter – the Concept)[10].

According to this Concept, the category of criminal (subject to litigation) misdemeanors should include: a) separate acts that under the current CC of Ukraine, relate to crimes of minor gravity, which according to the policy of criminal legislation humanization will be recognized by the legislator as not having a significant degree of social danger; b) acts under the current CAO, which are within «court jurisdiction» and are not administrative in their essence (minor hooliganism, minor stealing of somebody else's property, etc.).

However, the scientific literature criticizes the introduction of the criminal misdemeanor institution in the legal system of Ukraine, since this idea contradicts a number of provisions of the Constitution of Ukraine (for example, Articles 29, 30, 31, 34, 39, 60, 62, 92, etc.)[11], which provide for the concept of «crime» and do not mention «criminal misdemeanor.» In this case, the strongest argument is the requirements of paragraph 22, Part 1, Art. 92 of the Basic Law on the list of types of legal responsibility and the presumption of innocence of persons, enshrined in Art. 62 of the Constitution of Ukraine.

Instead, according to paragraph 5 of the Resolution of the Plenum of the Supreme Court of Ukraine of November 1, 1996 «On the Application of the Constitution of Ukraine in the Administration of Justice,» in assessing constitutionality, the courts should proceed on the basis that normative legal regulations of any state or other body (acts of the President of Ukraine, resolutions of the Verkhovna Rada of Ukraine, resolutions and orders of the Cabinet of Ministers of Ukraine, legal regulations of the Verkhovna Rada of the Autonomous Republic of Crimea or decisions of the Council of Ministers of the Autonomous Republic of Crimea, acts of local self-government, orders and instructions of ministries and departments, orders of heads of enterprises, institutions and organizations,

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[10] Pro rishennia Rady natsionalnoi bezpeky i oborony Ukrainy vid 15 liutoho 2008 r. "Pro khid reformuvannia systemy kryminalnoi yustytsii ta pravookhoronnykh orhaniv" [On the decision of the National Security and Defence Council of Ukraine of February 15, 2008 "On the process of reforming the criminal justice system and law enforcement bodies" (The Decree of the President of Ukraine no. 311/2008 of April 8, 2008). Retrieved from http://zakon0.rada.gov.ua/laws/show/311/2008. (in Ukrainian)

[11] *Konstytutsiia Ukrainy [The Constitution of Ukraine].* Uzhhorod: JSC Patent, 1996. 119 p. (in Ukrainian)

etc.) are subject to the assessment and compliance with both the Constitution and the law[12].

In addition, the content of clause 1.1 of the operative part and the last paragraph of clause 2 of the reasoning part of the Decision of the Constitutional Court of Ukraine in case no. 1-22/2001 no. 7-rp/2001 (case about liability of legal entities) of May 30, 2001[13] states that the content of clause 22 of Art. 92 of the Constitution of Ukraine indicates that the grounds and general principles of criminal liability should be provided exclusively by laws. Therefore, the legislator may determine other types of delicts (offenses) by law, in particular, to establish liability for committing criminal misdemeanors. Evidently, the national legal system involves constitutional (political and legal) responsibility not covered by the provisions of Art. 92 of the Constitution of Ukraine and the introduction of the category "criminal misdemeanor" into criminal law do not contradict obligatory to the provisions of the Basic Law, since the Constitution of Ukraine, according to Professor A.O. Selivanov[14] enables to realize the idea. The criminal misdemeanor should be considered an ideological-regulative criminal-legal institution, structural element of criminal law.

Nowadays, the procedure for introducing a criminal misdemeanor into the provisions of criminal procedure law has just begun. By adopting the CPC of Ukraine in 2012, the legislator introduced the concept of «criminal misdemeanor» as a separate type of criminal offense.

Therefore, the concept «criminal misdemeanor» appeared textually in the CPC of Ukraine 2012, which provided for that the Law of Ukraine on criminal liability includes legislative acts of Ukraine that establish criminal liability, such as the Criminal Code of Ukraine and the Law of Ukraine on criminal misdemeanors» (para. 7, Part 1, Art. 3 of the CPC of Ukraine)[15].

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[12] *Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh [The Resolutions of the Plenum of the Supreme Court of Ukraine in criminal cases].* 2nd ed. K.: Skif, 2007. Pp. 9-15.

[13] Rishennia Konstytutsiinoho Sudu Ukrainy u spravi za konstytutsiinym zvernenniam vidkrytoho aktsionernoho tovarystva "Vseukrainskyi Aktsionernyi Bank" shchodo ofitsiinoho tlumachennia polozhen p. 22 ch. 1 st. 92 Konstytutsii Ukrainy, ch.1, 3 st. 2, ch. 1 st. 38 Kodeksu Ukrainy pro administratyvni pravoporushennia (sprava pro vidpovidalnist yurydychnykh osib) [The decision of the Constitutional Court of Ukraine in the case of the constitutional appeals of the Open Joint Stock Company "All-Ukrainian Joint-Stock Bank "regarding the official interpretation of the provisions of para. 22 of Part 1 of Art. 92 of the Constitution of Ukraine, Parts 1, 3 of Art. 2, Part 1, Art. 38 of the Code of Ukraine on Administrative Offenses (case on liability of legal entities)]. *Visnyk Konstytutsiinoho Sudu Ukrainy [Bulletin of the Constitutional Court of Ukraine]*, no. 5, 2001. Art. 234. (in Ukrainian)

[14] Selivanov A. O. Ukrainskomu narodu potribna "zhyva" Konstytutsiia Ukrainy [Ukrainian people need "live" Constitution of Ukraine] / A. O. Selivanov. Retrieved from http://ckp.in.ua/news/10060. (in Ukrainian)

[15] Kryminalnyi protsesualnyi kodeks Ukrainy [Criminal Procedure Code of Ukraine] (Law of Ukraine no. 4651-VI of April 13, 2012). *Vidomosti Verkhovnoii Rady Ukrainy [Bulletin of the Verkhovna Rada of Ukraine],* no. 9–10, 11–12, 13, 2013. Art. 88. (in Ukrainian)

However, any legal regulation, primarily new, is reflected in unity with other provisions with regard to ruling public relations in a particular area. The new regulation occurs when social changes have been gradually accumulating and have acquired a new qualitative state that requires a fundamentally new legal regulation. New social relations change the previous, and a new adopted legal regulation regarding these relations cancels the old legal provisions. Therefore, the amendments to criminal legal regulations in order to introduce a criminal misdemeanor should have objective grounds related to the area of socially determined criminal law policy in society, but require further approving of a criminal misdemeanor by regulations of criminal (material) law.

Moreover, the objective to improve the quality of Ukrainian criminal law should be considered, since it should be ensured by the two main processes of sustainable development (dynamics and stability), as well as their ration is important. Furthermore, the introduction of changes to the criminal law, determined by criminal policy and dominant ideology, should not violate the codified system of criminal law and its implementation. These processes must be dialectically combined to improve criminal law.

Further characteristics of the available approaches to doctrinal interpretation of the category of criminal misdemeanor require considering of the basic conceptual provisions that determine the possible ways of introducing a criminal misdemeanor into criminal law.

The scientists of the Yaroslav Mudryi National Law University interpret the expediency of the misdemeanor institution in the «Concept of introducing a misdemeanor by adopting the Law (Code) of Ukraine on misdemeanors»[16]. Scientists argue that the idea of delineating crimes and misdemeanors is implemented in the legislation of Austria, England, Belgium, the Netherlands, Spain, the Republic of Latvia, the Republic of Lithuania, the Republic of San Marino, the United States, Switzerland, Germany, France. In addition, in some countries, the misdemeanor category is determined within the framework of criminal law (legislation), in others, in special regulations. On the contrary, at the present time, current domestic criminal law of Ukraine contains a number of acts, which by their degree of social danger do not always correspond to the concept and content of the crime as the most socially dangerous type of offense that

[16] *Yurydychnyi visnyk Ukrainy [Legal Bulletin of Ukraine],* no. 21 (986), May 24-30, 2014. (in Ukrainian)

requires their decriminalization. In addition, the scientists claim the necessity of an advanced procedure for investigating and reviewing acts of so-called «court jurisdiction,» which is far from being fully implemented within the framework of the CAO of Ukraine, but its implementation into the legislation is essential, since it would create the required legal (legislative) guarantees to ensure the full and comprehensive protection of the rights and freedoms of the person prosecuted. In other words, a new approach to determining the form of legal liability, different from administrative and criminal, expressed in a separate legal regulation, the Law (Code) of Ukraine on misdemeanors, should be applied. According to experts, such approach will harmonize Ukrainian legislation with the legislation of European countries, bring it further toward European legal standards, and ensure the implementation of the State policy on humanization of criminal liability by decriminalizing a number of acts that are now recognized as crimes; ensure full and comprehensive protection of the rights and freedoms of the person prosecuted for administrative offences, which entail heavier types of measures of influence; reduce the number of persons who are subject to punishments such as deprivation or restraint of liberty, and persons who are prosecuted and in this regard suffer conviction.

M. Khavroniuk advocates this perspective, because it would be logical to create an independent Code on criminal misdemeanors. They argue that categorizing of criminal misdemeanors in the current Criminal Code of Ukraine cannot be considered optimal; as a result, crimes and misdemeanors joined together will create confusion in the structure of the provisions of the CC of Ukraine and the institutions. Moreover, two types of offenses in a single legal regulation require a substantial and unjustified revision of the CC of Ukraine and will lead to the criminalization of a significant number of acts that will negatively affect the crime situation in society, artificially increase statistical indicators and create a negative perception of the political situation in the country[17]. Yu. Usmanov[18],

[17] Khavroniuk M. I., Khavroniuk A. N. Shchodo vidmezhuvannia zlochynu vid kryminalnoho prostupku [Regarding the delineation of a crime from a criminal misdemeanour]. Retrieved from http://www.big-lib.com/book/63_Kriminalnii_kodeks_Ykraini___10_rokiv_ochikyvan_T/6849_(in Ukrainian)

[18] Usmanov Yu. Kryminalnyi prostupok – sposib pomiakshyty vidpovidalnist? [Is criminal misdemeanour a way to mitigate responsibility?]. Retrieved from http://www.pravoconsult.com.ua/shho-take-kriminalnij-prostupok-i-z-chim-jogo-yidyat-v-ukraini/#ixzz311621a00. (in Ukrainian)

P. Mudrak[19], O. Knyzhenko[20] advocate this perspective and underline that an individual legal regulation should be created.

The arguments of the scholars are appropriate and reasonable, but along with this in the legal literature, proposals for the establishment of criminal misdemeanors in the current CC of Ukraine exist.

The conceptual aspects of the introduction of a criminal misdemeanor within the current Criminal Code of Ukraine are reflected broadly in the model draft of the CC of Ukraine, prepared by members of the Criminal Law Department of the National University «Odessa Law Academy,» including V. O. Tuliakova, N. A. Myroshnychenko, N. L. Berezovska, D. O. Balobanova, N. M. Myroshnychenko, Yu. Yu. Kolomiiets-Kapustina, M. M. Dmitruk, O. M. Polishchuk, M. P. Ihnatenko, L. K. Kravets and others. The model project based on the concept of criminal offense in accordance with the provisions of Art. 6 of the European Convention on Human Rights and Fundamental Freedoms and the practice of the ECHR. The experts consider the idea of introducing a criminal misdemeanor into the criminal law of Ukraine to be mature enough and confirm the grounds for its implementation, which requires the unity of doctrinal thought today[21].

Therefore, the ways of introducing a criminal misdemeanor are the author's perspective of the possible unification of various scientific opinions and considerations about the essence of this legal phenomenon that today have become a multi-layered structure, which is not provided by criminal law leading to scientific polemics and preventing the further development of the national legal system.

In our opinion, the concept of criminal misdemeanor should be a unified, scientifically grounded, theoretically modelled, predicted, justified by the actual needs of social life, verified and proven idea, while

[19] Mudrak P. M. Instytut kryminalnykh prostupkiv v konteksti intehratsii natsionalnoho zakonodavstva do yevropeyskykh standartiv [Institute of criminal misconduct in the context of integration of national legislation to European standards]. *Naukovyi visnyk mizhnarodnoho humanitarnoho universytetu [Scientific Bulletin of the International Humanitarian University],* no. 6–3 (2), 2013. Pp. 93–94. (Seriia 'Yurysprudentsiia' [Series Jurisprudence]). (in Ukrainian)

[20] Knyzhenko O. Pryntsyp zakonnosti v konteksti reformuvannia kryminalnoho zakonodavstva Ukrainy [The Principle of Legitimacy in the Context of the Reform of the Criminal Legislation of Ukraine] / O. Knyzhenko. *Naukovyi chasopys natsionalnoi akademii prokuratury Ukrainy [Bulletin of the National Academy of Public Prosecutor of Ukraine],* no. 1, 2014. Pp. 86–91. Retrieved from http://www.chasopysnapu.gp.gov.ua/chasopys/ua/pdf/1 –2014/86-knyzenko.pdf. (in Ukrainian)

[21] Tuliakov V. O., Pimonov H. P., Mitritsan N. I. et al. *Kryminalnyi prostupok u doktryni i zakonodavstvi [Criminal misdemeanours in doctrine and legislation]* / V. O. Tuliakov (Ed.). O.: Yurydychna literatura, 2012. 424 p. (in Ukrainian)

suggestions and recommendations stated in it should become the necessary product for further implementation in law.

Therefore, the introduction of the concept of criminal misdemeanor as a system of fundamental scientific views and ideas about the phenomenon inherent in criminal-legal relations, under which socially dangerous actions have caused minor reversible damage to important groups of social relations, is relevant.

11.2. Methodology for Developing the Concept of Criminal Misdemeanor

Among the key areas of the theoretical development of the concept of criminal misdemeanor, as any phenomenon, is the methodology justified by the way of cognition (methods, procedures).

Considering the methodological foundations of the criminal misdemeanor study in the criminal law of Ukraine, it should be clarified what is: the supposed leading scientific idea of a criminal misdemeanor; the essence of a criminal misdemeanor as a phenomenon (object, subject of study); contradictions that arise in the process of introducing a criminal misdemeanor into the criminal law framework; the stages, phases of development (or trends) of a criminal misdemeanor. Considering the aforementioned theoretical statements, the main methods used in the study should be described.

The method of dialectical materialism. This is one of the philosophical methods, based on dialectical notions about the world around us, which is used to study state-legal phenomena. It is characterized by basic principles, such as historicism of any phenomena; comprehensiveness of considering of the subject of the study; the usage of dialectics categories in scientific research.

These principles are formulated on the basis of the main postulate of dialectics: all the phenomena of the environment are in continuous development, mutually transcend each other, constantly arise and cease; accordingly, in order to really understand the essence of the world, such means of the study are needed.

In addition, the method of dialectical materialism enables to study state-legal phenomena. The prerequisite for true knowledge is the principle of the research objectivity. It means to study the legal reality, perceiving it as it really is. «The nucleus» of dialectics is a dynamic approach to the

phenomena under study, specified in the most important laws of dialectics, which are simultaneously: specific methods of thinking, enabling to study and understand the movement of a certain phenomenon, law in this case, its source and nature. Such operations are the dichotomy of a single and study of its contradictory parties, distinction of quantitative and qualitative changes in the phenomenon development and the negation of the negation as the abolition of obsolete trends from the viable in the object development. Compliance with this principle is of particular importance for law-based scholars. The stability of law as a system of regulations, its «conservatism» in relation to changing socio-economic conditions, is the cause of a static approach to legal reality in general. However, for legal science it is important to consider an object under study not in statics, but in dynamics. With regard to law, self-regulation is impossible; law develops in line with the development of society, being primarily subject to its objective patterns. However, law is characterized by contradictions, which are a specific source of its development and relative independence. In addition, law functions constantly, while processes in its implementation are dynamic, and this dynamics is subject to study[22]. Humanity has crossed the threshold of the new millennium with the need to rethink many fundamental values of social life and the pursuit of serious guarantees of sustainable development and legal regulation of social life under the relative disappearance of borders between space and time, between people and societies and states.

Due to the need to update views on the role and purpose of law in the new socio-historical conditions, its relationship with the trends of society development, the patterns of legal institution functioning, the effectiveness of regulatory capacity should be studied thoroughly.

Therefore, at the present stage, the domestic legal system is changing due to two groups of factors: external (processes of globalization) and internal (building a market economy, society formation). These processes affect all elements of the legal system and determine the trends of its further development. The transformation of the elements of the legal system requires rethinking of legal phenomena such as the legal system, legal regulation, self-regulation, legal regimes, etc.

In the criminal-legal sphere of application, the study of the phenomenon of criminal misdemeanor enables to consider the correlation

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[22] Gerlokh A. O metodakh poznaniia prava [About the methods of law study] / A. Gerlokh. *Pravovedenie [Jurisprudence]*, no. 1, 1983. Pp. 12–20. (in Russian)

of administrative and criminal norms under constant development, the interaction of material and ideal, providing a materialistic approach to this phenomenon. It enables to trace the nature of social relations in the formation of legal relations. The main dialectics law is considered the law of unity and struggle of opposites that reveals the source of development of all that exists, according to which contradictions occur (a certain connection of opposites). The content of this law is to find the opposites in the phenomenon under study and consider their struggle as a key factor in the sequential formation of the phenomenon, that is, a criminal misdemeanor.

The law of the mutual transition of quantitative and qualitative changes enables to observe the phenomenon regeneration, that is to say, the gradual increase of quantitative changes, associated with the object, leads to radical transformation of the object itself, to the occurrence of a new quality that will later affect reversely the nature and pace of the subsequent quantitative changes. For example, an increase in the sanctions of the current provisions and creation of special departments extending the scope of criminal prohibitions led to a growing impact of criminal liability by some means. Therefore, nowadays, the reform of the law-enforcement system towards humanization of criminal legislation by its decriminalizing is due. In some way, a crime as a phenomenon is undergoing transformation, the concept of «criminal offense,» which combines the types of acts, such as a crime and a criminal misdemeanor, is being introduced.

The next method, although historically previous than the dialectical materialism, but still relevant today, is *the method of abstraction*. It is universal and used both in practical and in theoretical research. According to D. P. Gorskii[23], to abstract means to separate from the wealth of the content of a particular phenomenon, to ignore deliberately the specificities and features of the phenomenon, but to identify the typical, most characteristic and essential in the phenomenon, to establish the laws according to which it exists, that is, to reveal it as a scientific category. According to A. M. Vasyliev[24], the abstract concepts, related to the logical system of the legal theory, enable to express the legal reality entirely and

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[23] Gorskii D. P. *Voprosy abstraktsii i obrazovaniia poniatii [Issues of abstraction and concept formation]* / D.P. Gorsky. M.: AN SSR, 1961. 341 p. (in Russian)

[24] Vasilev A. M. *Pravovye kategorii. Metodologicheskie aspekty razrabotki sistemy kategorii teorii prava [Legal categories. Methodological aspects of the development of the system of categories of the theory of law]* / A. M. Vasilev. M.: Yurid. lit., 1976. 265 p. (in Russian)

specifically. Abstraction or its results, abstractions, are associated with any development of thoughts. Therefore, without abstraction it is impossible to reach the categorical level of reality development. The essence of abstraction is in the allocation of a certain feature of the subject and consistent systematic detachment from the secondary features, connections, relations of the object under study. In the study of a criminal misdemeanor, abstraction enables to propose new definitions, to form constituent elements of misdemeanors, to identify their typical features.

In scientific knowledge, analysis and synthesis are related to each other organically. Under analysis, the subject of the study distributes into components and they are studied further using other methods. Under synthesis, elements of the phenomenon, perceived in the analysis, are combined into a single body and studied as a set of qualities of the object under study. However, V. K. Kolpakov[25] argues notably that dialectical relationship between analysis and synthesis reveals that they are not likely to be separate, individual ways of cognition. They exist only together, since they are the essence, two parts, two aspects of comprehensive knowledge. The result of cognition is always represented by the dialectical unity of analysis and synthesis. In this study, no issues can find the solution without analysis and synthesis of reality or legal constructs.

The next is the *historical materialist* method, established in the XIX century as one of the most important methods of scientific knowledge. In fact, this method can be regarded as a historical approach from the perspective of dialectical materialism. It requires a concrete historical approach to legal categories, provisions and jurisprudence, since their historical determinant enables to understand better the content of the latter, the source and prospects of development not only within a certain historical period, but also within an individual state, considering national traditions, political and legal culture.

In the study of a criminal misdemeanor in criminal law, the historical materialist method enables to establish the correlation between the concepts of «crime,» «administrative offense» and «criminal misdemeanor,» to find out the place of a criminal misdemeanor in the system of criminal law categories.

The study focuses on the genesis of a criminal misdemeanor to determine its legal nature. In addition, the historical approach supposes

[25]Kolpakov V. K. *Administratyvno-deliktnyi pravovyi fenomen [Administrative and delict law phenomenon]* (Monography) / V. K. Kolpakov. K.: Yurinkom Inter, 2004. 528 p. (in Ukrainian)

active application of the *comparative historical method*, that is, the set of cognitive means, procedures, which reveal the similarity and the distinction between the phenomena under study, their genetic affinity (linkage by origin), and determine the general and specific in their development.

Structuralism as a scientific direction of humanitarian knowledge occurred in the 20s of XX century. It is based on the establishment of a structure as a set of relations, considered not as a «skeleton» of an object, but as a set of rules by which other objects can be obtained by rearranging elements of a structure[26]. In structuralism, synchronic study of the object (not diachronic), its structure study, distinction of constituents and stable relations between them are of particular importance. *The method of structuralism* is used widely to study the essence of a criminal misdemeanor, as well as to define the main elements of its structure.

The axiological (value) approach is based on the concept of value and enables to find out the qualities and features of objects, phenomena, processes capable of satisfying the needs of an individual and society, as well as ideas and motives formulated as a norm and an ideal. Values are the advantage of certain meanings and the modes of behavior formed on this basis. Humanistic or universal values, such as life, health, love, education, work, creativity, beauty, etc., are fundamental. Systems of values are present in every culture, society, state, profession, personality. Axiological comprehension is applied to material and spiritual values. Any social institution, based on values of a more general level, forms its own specific values: cultural, pedagogical, professional, etc. A system of general and special criteria and value indicators is created.

A universal tool for cognitive activity is *system analysis* (or system approach). In the study of the concept of «criminal misdemeanor,» the system method provides grounds for considering it as a phenomenon with integrational qualities that has the proper conditions for self-development, as well as its inherent structure and functionality.

The system approach is related to the structural and functional, system-pragmatic, system-genetic, approaches etc.

The essence of the structural-functional approach is to distinguish the structural elements (components, subsystems) in the system objects and determine their role (functions) in the system. Elements and relations

[26] Gretskii M. N. Strukturalizm / M. N. Gretskii. *Filosofskii entsiklopedicheskii slovar [Philosophical Encyclopaedic Dictionary]*. M.: Sov. Encyclopedia, 1983. P. 657. (in Russian)

between them create the structure of the system. Each element performs specific functions that «work» for system-wide functions. The structure characterizes the system in statics, while functions – in dynamics. They begin to depend on each other.

The functional method enables to study the functions of a criminal misdemeanor. The study of the functioning can, for example, reveal what socially dangerous acts are criminal misdemeanors, distinguish criminal misdemeanors from other types of acts. Functional analysis enables to determine how fully human rights and freedoms are protected in the course of prosecution for criminal misdemeanors.

Modelling is essential for research of the internal and external relations of the object under study. It enables to study those processes and phenomena that are not subject to direct study. The modelling method has proven itself as an effective means of identifying essential features of phenomena and processes using a model (conceptual, verbal, mathematical, graphical, physical, etc.). In this study, modelling is important as a means of theoretical or practical indirect cognition, in which some auxiliary object (model) is used to provide the researcher with new scientific information about the features of an objective phenomenon or process under study. The model is aimed at disitegration of the object under study, the allocation of some of its essential elements, which are subject to formalization and evaluation of options and performance.

In our opinion, the conceptual model of introducing a criminal misdemeanor enables to study the ways of legislating the category of «misdemeanor,» to outline the range of acts appropriate to be included in it.

The sociological method is used in the study of documents and statistical data, while conducting a questionnaire. This method enables to determine, with high probability, the level of legal consciousness in a society (state of law and order), the opinion of law enforcement officers on problematic issues regarding the introduction of the criminal misdemeanor institution in the criminal law of Ukraine.

The hermeneutic (cognitive-procedural or interpretative) method enables to better understand the texts of legal regulations, important documents or works. This supports explaining and interpreting the internal content of the latter, as well as the concepts, definitions and terms to be considered.

The synergetic method. The concept «synergetic» derives from the ancient Greek word «synergeia,» which means cooperation, complicity, joint activity. In general, synergetics is an interdisciplinary area of research, the task of which is to study natural phenomena and processes based on the principles of self-organization of systems that consist of corresponding subsystems. Therefore, this concept was initiated precisely to refer to the processes of self-organization. Sometimes synergetics is considered as «global evolutionism» or «universal theory of evolution,» which provides a unified basis for describing the mechanism of any novelty emergence[27].

In the Encyclopaedic Dictionary, edited by A. A. Ivin[28], synergetics is defined as an interdisciplinary area of scientific research, which studies the general patterns of transition processes from chaos to order and vice versa, in other words, processes of self-organization and unauthorized disorganization.

According to V. N. Protasov[29], the introduction of the concept «synergetics» dates back to the period of joint work by German physicists H. Haken and R. Graham on the study of lasers (1968-1970), who discovered the spontaneous formation of macroscopic structures, self-organization.

Therefore, the objective of synergetics is to reveal during the study of systems spontaneously formed structures due to self-organization. Consequently, the essence of the synergetic approach as a universal scientific method is explanation of the occurrence of systems as a result of the ability of phenomena and processes to spontaneous (not predetermined by their previous development) self-organization[30].

The comparative legal method enables to reveal general trends and regularities of legal development that are inherent in various branches within one state, and to fix their manifestations under the specific conditions of individual countries. The comparative legal method requires

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[27]Lorents K. Kontseptsiia samoorganizatsii. Sinergetika. Obshchie polozheniia [The concept of self-organization. Synergetics. General provisions]. Retrieved from http:// spkurdyumov.ru. (in Russian)

[28] *Filosofiia: entsiklopedicheskii slovar [Philosophy: Encyclopedic Dictionary]* / A. A. Ivin (Ed.). M.: Gardariki, 2004. Retrieved from http:// dic.academic.ru/dic.nsf/enc_philosophy (in Russian)

[29] Protasov V. N. *Teoriia gosudarstva i prava. Problemy teorii gosudarstva i prava [Theory of State and Law. Problems of the theory of state and law]* / V. N. Protasov. 2nd ed. M.: Urait-M, 2001. 346 p. (in Russian)

[30]Ibid, p. 30.

using special ways and means of research due to the nature of the object, for example, the normative nature of law[31].

The application of the comparative legal method is a challenge, since its solution requires considering a large number of different factors (the legal culture of respective countries, legislation structure, legal infrastructure, national legal concepts, etc.), therefore, Yu. A. Tikhomirov[32] argues that it is important to comply precisely with methodological approaches, research principles, and consider legal techniques. In the study of criminal misdemeanor problems, this method enables to consider the trends in criminal legislation development in the states with legal systems approximated to Ukraine, to avoid incorrect decisions, and to follow positive experience of legislation on this issue.

In order to analyses a criminal misdemeanor comprehensively as a complex system of unlawful acts, a variety of methods, used successfully in other fields of scientific knowledge should be applied. For example, the method of modelling enables to examine the internal and external relations of the object under consideration. It enables to study those processes and phenomena that cannot be researched directly, since the essence of the latter is based on assumptions about the similarity of objects, when mutual unambiguous correspondences can be established between different phenomena, therefore, understanding of the features of one of them (the model) empowers to consider the quality of another (the original). Therefore, the modelling method is an effective means of identifying essential features, phenomena and processes using a model (conceptual, verbal, mathematical, graphical, physical, etc.).

In addition, the research uses *quantitative and qualitative methods*, which are common in various fields of science, such as scientometrics, bibliometrics, informetrics.

Therefore, the search for methodological foundations of the study is carried out in the following areas:

– the study of scientific works by well-known scientists who applied the general scientific methodology for studying a specific branch of science;

[31]Tille A. A. Sravnitelnyi metod v yuridicheskikh distsiplinakh Comparative method in legal disciplines / A. A. Tile, G. V. Shvekov. 2nd ed. M.: Higher School, 1978. Pp. 6–38. (in Russian)

[32]Tikhomirov Yu. A. Kurs sravnitelnogo pravovedeniia / Yu. A. Tikhomirov. M.: Norma, 1996. Pp. 54–60.

– the analysis of works by leading scientists who, simultaneously with the general problems of their branch, have studied the issues of such branch;

– summing up the ideas of the scientists who studied the problem directly;

– the study of specific approaches to solve this problem by practitioners who have not only developed but also implemented their ideas in practice;

– the analysis of Ukrainian scientists and practitioners' concepts in this scientific and practical area;

– the study of scientific works of foreign scientists and practitioners.

Furthermore, the methods considered do not exhaust the methodological diversity of approaches to study criminal misdemeanor issues in the criminal legislation of Ukraine, but, in our opinion, they are tools most requested in their study.

Therefore, the use of a wide range of general scientific and special legal methods forms a certain system of methods, which is the methodology of this study, that is, a set of methods of cognition and techniques, which enable to solve special research tasks related to the study of the features of a criminal misdemeanor as an act, *which does not cause a significant social danger* or which is socially dangerous, but the degree of harm caused by such act is minor and significantly different from the harm caused by a crime. Evidently, the methods considered above do not exhaust the entire methodological variety of approaches to study the category of criminal misdemeanor in the criminal-law doctrine in general, but in line with our study, this methodological framework is the most optimal.

CONCLUSIONS

The concept of criminal misdemeanor should be a unified, scientifically grounded, theoretically modelled, predicted, justified by the actual needs of social life, verified and proven idea, while suggestions and recommendations stated in it should become the necessary product for further implementation in law.

Nowadays, the concept of criminal misdemeanor as a system of fundamental scientific views and ideas about the phenomenon inherent in criminal-legal relations, under which socially dangerous actions have caused minor reversible damage to important groups of social relations, is relevant. In order to reveal theoretical issues regarding a criminal

misdemeanor, the concept (theoretical basis) for introducing this act into the law on criminal liability should be justified. The concept is considered as a system of views, a system of describing a particular subject or phenomenon in relation to its structure, functioning that contribute to its understanding, interpretation, study of the main ideas. The concept is extremely important, since it is a single, decisive notion, the main idea of scientific research. The issue of responsibility for criminal misdemeanors centers on the definition of the concept of «criminal offenses,» which theoretical and methodological justification remains open.

Consequently, the methodology of the study of the concept of criminal misdemeanor is considered as a set of methods of cognition and techniques, which enable to solve special research tasks related to the study of the features of a criminal misdemeanor as an act (which does not cause a significant social danger or which is socially dangerous, but the degree of harm caused by such act is minor and significantly different from the harm caused by a crime).

SUMMARY

In the study, basic conceptual provisions that determine the possible ways of introducing a criminal misdemeanor into criminal law are considered; scientific approaches to the criminal misdemeanor are described.

Therefore, the study reveals that: 1) theoretical and methodological developments concerning a criminal misdemeanor are at the initial stage; 2) responsibility for criminal misdemeanors centers around the definition of the concept of «criminal offenses,» while theoretical and methodological justification of a criminal offense remains open in criminal law doctrine; 3) the theoretical foundation, that is, a single concept of criminal misdemeanor is undeveloped.

The methodology of the study of the concept of criminal misdemeanor is defined as a set of methods of cognition and techniques, which enable to solve special research tasks related to the study of the features of a criminal misdemeanor as an act (which does not cause a significant social danger or which is socially dangerous, but the degree of harm caused by such act is minor and significantly different from the harm caused by a crime).

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CHAPTER 12
MODERN TRENDS IN THE PROCEDURAL FORM DIFFERENTIATION UNDER REFORMING THE CRIMINAL JUSTICE SYSTEM OF UKRAINE

Drozd V. H.

INTRODUCTION

In 2012, the adoption of the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine) led to significant changes in the criminal procedure system due to the development and improvement of legal institutions, the procedural form of which should comply with the requirements of European standards in criminal justice. Nowadays, it seems difficult to imagine the regulation of criminal proceedings without numerous differentiated legal proceedings and arrangements for performing procedural activities within them. Therefore, the differentiation of the procedural form determines the systemic and structural organization of modern criminal procedure, which is complex, significantly different from the previous one and requires a thorough scientific analysis.

The expediency and usefulness of the differentiated procedure for criminal justice has been proved by the time; it is recognized not only by the national legislator but also by the international community that has been reflected in the Recommendation no. K (81) 7 of the Committee of Ministers of the Council of Europe to Member States on Measures Facilitating Access to Justice of May 14, 1981, Recommendation no. K (87) 18 of the Committee of Ministers of the Council of Europe concerning the Simplification of Criminal Justice of September 17, 1987 and others.

In general, the study of the unity and differentiation of the criminal procedural form during pre-trial investigation is derived from the definition of the concept of the procedural form. Significant contribution to the theory of criminal procedure on the definition of the essence of the procedural form is made in the works of V. P. Bozhiev, V. M. Horshenov, Yu. M. Hroshevyi, L. M. Loboiko, P. Ye. Nedbailo, V. M. Protasov, D. V. Simonovych, M. S. Strohovych, V. M. Trofymenko and others. Meanwhile, the modern development of criminal procedural legislation

testifies to the introduction of a new paradigm of the criminal procedural form. At the same time, in the domestic criminal procedure study, the issue remains underdeveloped, especially in terms of the current CPC of Ukraine. Development trends of criminal procedure legislation in Ukraine enable to determine its vector not toward the unification, but on the contrary, the differentiation of the criminal procedural form. The occurrence of new procedures and the extension of applying those procedural arrangements that have specific features and significantly differ from the general procedures for criminal proceedings create proper conditions for the effective resolution of criminal proceedings.

12.1. Differentiation of the criminal procedural form: Doctrinal interpretation and types

The concept of the criminal procedural form is one of fundamental definitions in the criminal procedure theory that, despite rather extensive study and research, remains poorly developed at the level of the scientific doctrine. In any case, the study of the procedure for pre-trial investigation is connected with the study of the procedural form. In scientific literature, the doctrinal approaches to the essence of the criminal procedural form are diametrically opposite, indicating the controversy of this issue and the unequal understanding of the problem of unity and differentiation of the criminal procedural form.

The study of the unity and differentiation of the criminal procedural form during pre-trial investigation is a derivative of the definition of the concept of the procedural form. Evidently, in the study, the disclosure of the essence of the sectoral procedural form, namely, the criminal procedural one is of particular interest. M. S. Strogovych, a prominent scientist, argues that the criminal procedural form is the legal form, which is a set of homogeneous procedural requirements for the actions of the participants of the proceedings, aimed at achieving the material and legal result, as well as a set of conditions established by the procedural law for performing actions by the investigating authorities, the prosecutor’s office

and the court during investigation and resolution of criminal cases [1]. A similar definition is in the works of V. P. Bozhiev [2].

Moreover, modern scholars' definitions are worth mentioning. For example, Yu. M. Hroshevyi argues that the criminal procedural form is a legal regime of criminal procedural activity, involving the compliance with legal procedures, implementation of certain procedural conditions and insurance of guarantees in criminal proceedings. The concept of the criminal procedural form emphasizes that the activities of operational units, pre-trial investigation bodies, a prosecutor, an investigating judge and a court are formalized. In other words, such activity is organized, regulated, has certain forms, in accordance with a number of requirements for it [3].

L. M. Loboiko interprets the criminal procedural form as the procedure established by law for criminal proceedings in general, procedure for certain legal proceedings and procedure for procedural decision adoption. The criminal procedural form is important because it creates a well-defined, legally established regime for criminal proceedings [4]. However, in this definition, the scientist has ignored the procedure for the implementation of the rights and obligations of participants of criminal proceedings, which are not the subjects of authorities.

Though the study does not present all the existing doctrinal approaches regarding the concept of the criminal procedural form, it should be noted that at the present stage of the scientific development, scholars has not come to a single view concerning this issue. However, most scholars advocate the interpretation of the criminal procedural form as a legal phenomenon, complex in its content, which is revealed through the complexity of its constituent components that reflect its different sides.

However, the author cannot agree with the point of view prevailing during the development of the criminal procedure science of the Soviet

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[1] Strogovich, M.S. (1939). Priroda sovetskogo ugolovnogo protsessa i printsip sostiazatelnosti [The nature of the Soviet criminal process and the principle of competition]. M: Legal Publishing house PCJ USSR, P. 32 (in Russian)

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[4] Loboiko, L.M. (2012). Kryminalnyi protses: pidruchnyk [Criminal procedure: A teaching manual]. K.: Istyna, P. 15 (in Ukrainian)

period, in particular that the procedural form should be unified in all criminal proceedings. M. S. Strogovych [5], T. M. Dobrovolska, P. S. Elkind [6] advocated such a position in their works.

At present, the reformation and improvement of criminal procedural legislation have led to significant changes in criminal proceedings. Therefore, the approach to the unification of the procedural form does not correspond to the current provisions that regulate the procedure for criminal justice. At the same time, the procedural form differentiation should not be considered as a dominant trend in the development of criminal procedure, since the unity of the form is aimed at ensuring the application of common rules for a certain category of proceedings during pre-trial investigation and trial proceedings. Fundamentally, this contributes to both the compliance with the rights, freedoms and legitimate interests of the participants of criminal proceedings and the legality of criminal justice in general.

The scientific literature argues appropriately that the striving to differentiate criminal justice is a tendency characteristic for almost all modern states of the world, the origins of which are rooted in the distant past. It is based on the determination to apply such forms of legal proceedings that would be adequate to the hard and complex proceedings under review and the legal implications that may result from such proceedings [7]. In this regard, one should agree with the scientific position that the unity of the criminal procedural form does not exclude its differentiation, the idea of which rests precisely on the unity. Any differentiation is derived from the usual (unified) form. The unity and differentiation of the criminal procedural form are two opposites, which are in the dialectical unity [8]. At the present stage of criminal procedure

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[8] Tsyganenko, S.S. (2015). Differentsiatsiia kak model ugolovnogo protsessa (ugolovno–protsessualnaia strategiia) [Differentiation as a model of the criminal procedure (criminal procedural strategy)]. Proceedings from International Conference Dedicated to the 160th Birth Anniversary of Prof. I.Ya. Foinitskii. (St. Petersburg,

study, most researchers of this issue advocate this perspective. In addition, in scientific literature, the viewpoint of the necessity to introduce a new principle of criminal procedure, that is, the principle of optimal organization, differentiation and process acceleration is presented [9].

In this study, it should be mentioned that V.M. Trofimenko has carried out a systematic analysis of the procedural form of criminal proceedings, revealing that differentiation is a trend towards the development of modern legislation [10]. In view of this, O.H. Shylo states properly that the expediency and usefulness of the differentiated procedure of criminal proceedings are proved by the time, because it has been recognized not only by the national legislator but also by the international community [11].

From the perspective of the criminal procedure study, the «criminal procedural form differentiation» is a method of procedural organization, according to which in the criminal procedure system, individual legal proceedings become autonomous, as well as general and differentiated procedural arrangements to perform them are established [12]. Furthermore, the scientific literature contains other definitions of the concept under study. For example, A. Bardash considers the differentiation of criminal justice as the occurrence of proceedings that differ qualitatively in terms of the degree of complexity of procedural forms within a single criminal procedure [13].

Doctrinal approaches to the essence of the procedural form indicate differentiation is possible towards both complication of the form in some categories of criminal proceedings and its simplification in others. According to L.M. Loboiko and O.A. Banchuk, usually the procedure is single (unified) for all criminal proceedings, but in some cases, the

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[10] Trofymenko, V.M. (2017). Teoretychni ta pravovi osnovy dyferentsiatsii kryminalnoho protsesu Ukrainy [Theoretical and legal basis of differentiation of the criminal process in Ukraine] (Dissertation of Doctor of Law). Kharkiv, P. 145 (in Ukrainian). Trofymenko, V.M. (2012). Do pytannia shchodo poniattia ta znachennia dyferentsiatsii kryminalno-protsesualnoi formy [On the issue of the concept and significance of the differentiation of the procedural form]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia «Pravo» [Scientific Bulletin of Uzhgorod National University. The Series Law], 18, 140. (in Ukrainian)

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[12] Trofymenko, V.M. (2016). Poniattia dyferentsiatsii kryminalnoi protsesualnoi formy [The notion of differentiation of criminal procedural form]. Visnyk Natsionalnoi akademii pravovykh nauk Ukrainy [Bulletin of the National Academy of Legal Sciences of Ukraine], 4 (87), 180. (in Ukrainian)

[13] Bardash A. (2012). Do pytannia shchodo dyferentsiatsii protsesualnoi formy [On the issue of differentiation of procedural form]. Yurydychnyi visnyk [Legal Bulletin], 3, 131-136. (in Ukrainian)

legislator provides for special, differentiated procedures. The criminal procedural form differentiation can be related both to the complication and to the simplification of the proceedings [14]. In the scientific literature, another point of view is conveyed regarding this issue; in particular, the structure of the criminal procedural form includes two types: accelerated and simplified, which are different phenomena and should be distinguished from each other [15]. In this scientific dispute, the classical scholar viewpoint of the procedural form differentiation towards simplification or complication should be supported. Traditionally, the procedural form complication is associated with the introduction of additional guarantees of the rights for participants of criminal proceedings, involving more subjects, while its simplification is related to considering the less gravity of the crime, the obviousness of its commission, the degree of proceeding complexity.

At present, the procedural form differentiation should be considered as the feature of criminal justice, aimed at ensuring its stability through specific and special procedures for pre-trial investigation and judicial proceedings, which differ from the unified procedural form, and thus, due to their specificity, contribute to the rule of law in criminal procedure and the protection of its participants' rights.

The current CPC of Ukraine demonstrates a clear example of the procedural form differentiation in Section VI that provides for special procedures for criminal proceedings. The systematic analysis of the provisions of the CPC of Ukraine enables to conclude that, in addition to the special procedures for criminal proceedings in Section VI of the CPC of Ukraine, several differentiated forms of pre-trial investigation or judicial proceedings are provided for. Therefore, in the framework of differentiated forms of criminal proceedings, two types can be distinguished, namely, specific and special procedures for pre-trial investigation and judicial proceedings.

Section VI of the CPC of Ukraine includes specific procedures for criminal proceedings, such as criminal proceedings based on agreements (Chapter 35); private criminal proceedings (Chapter 36); criminal

[14] Loboiko, L.M., Banchuk, O.A. (2014). Kryminalnyi protses: navch. posib. [Criminal procedure: A teaching manual]. Kyiv: VAITE, P. 20 (in Ukrainian)

[15] Slyvych, I.I. (2015). Pryskoreni ta sproshcheni provadzhennia v kryminalnomu sudochynstvi: vyznachennia ta dotsilnist isnuvannia [Accelerated and simplified proceedings in criminal justice: Definition and expediency of existence]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia «Pravo» [Scientific Bulletin of Uzhgorod National University. The Series Law], 31 (3), 98-99. (in Ukrainian)

proceedings with regards to a special category of individuals (Chapter 37); criminal proceedings in respect of underage persons (Chapter 38); criminal proceedings in the matter of application of compulsory medical measures (Chapter 39); criminal proceedings containing state secret (Chapter 40); criminal proceedings in the territory of diplomatic missions, consular posts, the air, sea, or river craft of Ukraine, which navigates outside of Ukraine under the flag or with distinctive sign of Ukraine whenever the home port of such craft is located in Ukraine (Chapter 41).

Special procedures for criminal proceedings include individual provisions for the procedural form differentiation during pre-trial investigation (Chapter 24-1, 25 Section III, Section IX-1 of the CPC) or during court proceedings in the first instance (Art. 323; § 1, 2 Chapter 30 Section IV of the CPC), such as: 1) special pre-trial investigation of criminal offences (Chapter 24-1); 2) pre-trial investigation of criminal misdemeanours (Chapter 25); 3) special judicial proceedings (Part 3, Art. 323); 4) specific regime of pre-trial investigation in conditions of martial law, a state of emergency or in the area of anti-terrorist operation (Section IX-1); 5) simplified procedure for criminal misdemeanours (§ 1 Chapter 30); 6) proceedings in trial by jury (§ 2 Chapter 30).

Under reforming of criminal procedural legislation, new procedures for criminal proceedings tend to occur. Due to specific features, special procedures for criminal proceedings differ essentially from the general procedure for criminal justice towards either complication or simplification.

The specific and special procedure for criminal proceedings shall ensure the basic procedural guarantees for the participants of proceedings. In turn, during simplified or complicated criminal proceedings, the principles of criminal proceedings shall be complied with. Further development of the criminal procedure legislation towards the criminal procedural form differentiation should be scientifically grounded, as well as the achievement of theoretical developments that correspond to the current level of social relations should be take into account.

Therefore, the development of the criminal procedure study has been demonstrating a tendency to differentiate the procedural form of criminal justice, including pre-trial investigation.

Evidently, to reveal and establish all the specificities of pre-trial investigation in differentiated forms of criminal proceedings go beyond

this study, consequently, the problematic aspects that require the theoretical and practical priority will be under focus.

12.2. Special pre-trial investigation as a manifestation of the criminal procedural form differentiation (according to the current legislation of Ukraine)

Nowadays, the procedural form differentiation is manifested in special pre-trial investigation of criminal offenses. This form of proceedings was introduced to the CPC of Ukraine on October 7, 2014 and is provided for in Chapter 24-1 «Features of special pre-trial investigation of criminal offenses» [16]. The necessity of introducing this institute was due to the lack of the procedure for criminal prosecution of persons who refused to come to the bodies of pre-trial investigation, which made it impossible to ensure the inevitability of punishment for such persons.

Moreover, recently, the number of crimes against basic Ukraine's national security and international legal order, crimes, related to terrorist activities of a high social danger, have significantly increased due to internal and external socio-political factors. In this regard, scientific literature emphasizes that the existing criminal procedural institutes have shown their inability to respond effectively to these transformations. Therefore, the lack of relevant elements in the system has indicated its ineffectiveness in relation to these factors. The need to manage the system from the outside has occurred, in particular, to make appropriate changes to the CPC of Ukraine, to define a mechanism that would contribute to solving system-wide and institutional problems by the system [17].

Special pre-trial investigation should be considered due to insufficient study of this issue in the domestic science. In addition, in practice, a series of problematic issues require consideration and prompt resolution.

At present, to determine the essence of a criminal proceeding in the absence of a suspect or accused (in absentia) different concepts are used, namely: «criminal proceedings in absentia,» «examination of a criminal

[16] Pro vnesennia zmin do Kryminalnoho ta Kryminalnoho protsesualnoho kodeksiv Ukrainy shchodo nevidvorotnosti pokarannia za okremi zlochyny proty osnov natsionalnoi bezpeky, hromadskoi bezpeky ta koruptsiini zlochyny [On amendments to the Criminal and Criminal Procedure Codes of Ukraine regarding inevitable punishment for separate crimes against foundations of national and public security, and corruption offences] (Law of Ukraine no. 1689-VII of October 7, 2014, Art. 2046).Vidomosti Verkhovnoi Rady Ukrainy [Bulletin of the Verkhovna Rada of Ukraine], 46, 3004. (in Ukrainian)

[17] Teteriatnyk, H.K. (2017). Unifikatsiia ta dyferentsiatsiia protsesualnoi formy: synerhetychnyi pidkhid [Unification and differentiation of the procedural form: Synergistic approach]. Verkhovenstvo prava [Rule of Law], 1, 139. (in Ukrainian)

case in absentia,» «trial in absentia,» «justice in absentia» and others. In this regard, scientists raise the question of determining the legal nature and place of special pre-trial investigation in the criminal proceedings system. For this purpose, a differentiated criminal proceeding may be considered as such that: first, contains differences in legislative regulation; second, differs significantly in carrying out all criminal proceedings or its individual stages, including pre-trial investigation. According to A. S. Tukiiev, a special (in absentia) pre-trial investigation is an ongoing proceeding that is carried out: first, with enhanced procedural guarantees; second, in accordance with a special procedure; third, if grounds and conditions provided for by law are present [18].

A comprehensive analysis of the provisions of the CPC of Ukraine enables to highlight the features of special pre-trial investigation that distinguishes it from the general procedure. These should include the following.

First, special pre-trial investigation shall be conducted following the investigating judge's resolution (para. 2, Art. 297-1 of the CPC of Ukraine). The motion of an investigator, public prosecutor to conduct special pre-trial investigation shall serve as the ground for it (Art. 297-2 of the CPC of Ukraine). However, the CPC of Ukraine does not specify, the investigating judge of which court is authorized to consider such a motion. Only systematic analysis of the provisions of the CPC of Ukraine enables to understand that a motion for special pre-trial investigation shall be filed to a local court, within the territorial jurisdiction of which a pre-trial investigation body is.

Second, special pre-trial investigation is carried out in criminal proceedings on crimes, the clear list of which is provided for in Part 2 of Art. 297-1 of the CPC of Ukraine.

Third, during pre-trial investigation, the suspect (except for underage persons) is hiding from the investigation and judicial bodies with the view of avoiding criminal liability, and if he/she is announced in interstate or international wanted list.

Fourth, participation of a defence counsel shall be mandatory in special pre-trial investigation from the moment of making the

[18] Tukiev, A.S. (2005). Problemy protsessualnoi formy zaochnogo ugolovnogo sudoproizvodstva [Problems of the procedural form of criminal proceedings in absentia] (Dissertation Abstract of PhD in Law). The Republic of Kazakhstan, Karaganda, 20 p. (in Russian)

corresponding procedural decision (para. 8, Part 2, Art. 52 of the CPC of Ukraine).

Fifth, all procedural actions shall be conducted, and procedural decisions shall be taken in absentia. However, the copies of procedural documents to be delivered to the suspect shall be sent to a defence counsel. (Part 2, Art. 297-5 of the CPC of Ukraine).

Primary, the differences in the procedure of conducting special pre-trial investigation are due to the inability to ensure the appearance of the suspect to the investigator, the prosecutor. Moreover, such a person shall be subject to criminal liability, even in his/her absence. Part 1 of Article 297-1 of the CPC of Ukraine states that special pre-trial investigation is carried out in accordance with the general rules of pre-trial investigation, taking into account the provisions of Chapter 24-1 of the Criminal Procedure Code of Ukraine. However, this chapter does not specify other features of this type of pre-trial investigation, except for its beginning (from the moment of the investigating judge's decision) and the arrangements of delivery of procedural documents to the suspect (Art. 297-5 of the CPC of Ukraine). Mandatory procedural actions in the absence of a suspect, as well as the term of special pre-trial investigation, etc., are not specified. Therefore, the lack of procedural regulation of the institute of special pre-trial investigation testifies to the imperfection of the relevant legislative provisions.

In addressing special pre-trial investigation, the investigating judge must make sure that there are factual grounds for such a decision. Among such grounds are: a) the presence of sufficient evidence to suspect a person in committing an offense provided for in Part 2 of Art. 297-1 of the CPC of Ukraine; b) hiding of a suspect the investigation and judicial bodies with the view of avoiding criminal liability; c) if the suspect is announced in interstate or international wanted list. In the absence of such grounds, the investigating judge refuses to comply with a motion for special pre-trial investigation, and adopts a ruling.

An analysis of judicial practice shows that in some cases the investigator, the prosecutor does not properly substantiate the motion for special pre-trial investigation. For example, on November 11, 2016, the investigating judge of the Suvorovskyi District Court of Odessa refused to comply with the prosecutor's motion to conduct special pre-trial investigation on suspicion of the OSOBA_3 in committing a criminal

offense under Part 1 of Article 115 of the Criminal Code of Ukraine for such reasons: the motion for special pre-trial investigation did not contain information on the announcement of the OSOBA_3 in the interstate or international wanted list, investigatory actions had not been carried out since 2013, therefore, measures taken were not enough to conclude that the suspect OSOBA_3 is hiding from the investigation and judicial bodies with the view of avoiding criminal liability [19].

During pre-trial investigation, only the ruling of investigating judge, related to refusal to conduct special pre-trial investigation, may be challenged in appeals procedure, while the ruling related to conduct special pre-trial investigation may not be challenged, the objection in respect of it may be filed during preparatory proceedings in court (para. 12, Part 1, Art. 309 of the CPC of Ukraine). Therefore, the question arises: why did the legislator provides for the inequality of the defence and the prosecution in respect of the possibility of appealing a court decision? After all, the defender, who actually represents the absent suspect, may have certain objections to the investigator's ruling and the need to insist on the legality. Therefore, not only the ruling of the investigating judge related to refusal to conduct special pre-trial investigation (which may be appealed by the investigator, the prosecutor), but also the ruling related to special pre-trial investigation (which may be appealed by the defender).

Therefore, *the author proposes the insertion of clause 12 of Part 1 of Article 309 of the Criminal Code of Ukraine into the following wording: 13) conducting special pre-trial investigation or denying it.*

It should be noted that Part 3 of Article 323 of the CPC of Ukraine provides for the possibility of conducting a special judicial proceeding, that is, a trial in criminal proceedings concerning crimes specified in Part 2 of Article 297-1 of the CPC of Ukraine, which takes place in the absence of the accused, except for minors, who is hiding from the investigation and judicial bodies with the view of avoiding criminal liability, and if he/she is announced in interstate or international wanted list. However, the systematic analysis of the CPC of Ukraine enables to understand that the legislator has not specified the procedure for «special court proceedings.»

[19] Ukhvala slidchoho suddi Suvorovskoho raionnoho sudu m. Odesy [The ruling of the investigating judge of the Suvorovskyi District Court of Odessa] (Case no. 523/14421/16-k of November 11, 2016). Baza danykh "Yedynyi derzhavnyi reyestr sudovykh rishen" [Database Unified State Register of Court Decisions]. Retrieved from http://www.reyestr.court.gov.ua/Review/63766402.

Moreover, the problems of conducting this type of court proceedings go beyond the scope of our study and require separate study and resolution.

For that reason, the procedural arrangements for conducting special criminal proceedings should be provided for in a separate chapter of the CPC of Ukraine to specify the features of carrying out both pre-trial investigation and judicial proceedings in the absence of the suspect, the accused. In view of this, the CPC of Ukraine should be supplemented with the chapter «Special Criminal Proceedings».

Therefore, special pre-trial investigation should be considered as the procedural form differentiation that provides for a specific procedure for investigating crimes, an exclusive list of which is specified in the criminal procedural law, with respect to the suspect, who is hiding from the investigation and judicial bodies with the view of avoiding criminal liability, and if he/she is announced in interstate or international wanted list. In addition, the study of the theoretical aspects and practices of special pre-trial investigation leads to the conclusion that its introduction is conditioned by the necessity of criminal prosecution of persons who evade their arrival to the bodies of pre-trial investigation and aimed at achieving the principle of criminal punishment inevitability. Moreover, the study shows that the legislative provisions regulating the institute of special pre-trial investigation is imperfect, accordingly, the need for further improvement exists.

12.3. The institution of agreements as the criminal procedural form differentiation

Another manifestation of the procedural form differentiation during the conduct of both pre-trial investigation and judicial proceedings is criminal proceedings on the grounds of agreements. This institute is relatively new for criminal procedural law since it was introduced in 2012 with the adoption of the current CPC of Ukraine. These circumstances require focusing on the theoretical and practical aspects of its implementation.

Primarily, this institute formation is aimed at resolving the social conflict and achieving consensus among the participants of criminal proceedings. It should be emphasized that, although in the national procedural law, this institute is relatively recent, in the legal systems of developed countries, it has been actively functioning for quite a long time. For example, the institution of agreements is applied in the criminal

proceedings of England, the United States of America, Spain, Portugal, Italy, Poland and France [20].

According to D.V. Simonovych, criminal proceedings based on agreements should be considered as the procedural form differentiation aimed at simplifying the procedure for resolving criminal legal conflicts and implemented by achieving a compromise between the prosecutor or the victim and the person who committed the criminal offense [21].

The court statistics on the number of agreements approved by judgements of courts of first instance during 2013-2018 requires separate analysis. Therefore, according to the State Judicial Administration of Ukraine, in 2013, courts of first instance considered 22 926 proceedings with agreements, (including 21 367 passed a judgement with the approval of the agreement); in 2014, 21 568 proceedings with agreements were considered (including 8 455 passed a judgement with the approval of a reconciliation agreement, 11 803 – a plea agreement); in 2015, 16 928 proceedings with agreements were considered (including 7 681 passed a judgement with the approval of a reconciliation agreement, 8 323 – a plea agreement); in 2016, 13 206 proceedings with agreements were considered (including 6 358 passed a judgement with the approval of a reconciliation agreement, 6 145 – a plea agreement); in 2017, 15 622 proceedings with agreements were considered (including 6 648 passed a judgement with the approval of a reconciliation agreement, 8 162 – a plea agreement). During the first half of 2018, 8691 proceedings were considered by courts with the approval of the agreement. Therefore, during 2013-2017, the number of criminal proceedings with the agreements brought to the court of first instance gradually decreased, from 22 926 to 15 622 proceedings.

During pre-trial investigation in a criminal proceeding based on agreements, the manifestation of differentiation consists primarily in the possibility for the victim and the suspect to conclude a reconciliation agreement throughout pre-trial investigation and for the prosecutor and the suspect to conclude a plea agreement.

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[20] Fisher, G. (2003). Plea bargaining's triumph: A history of plea bargaining in America. Stanford, CA: Stanford University Press, P. 31. Bagirov, A.R.O. (2008). Techical paper on Plea bargaining and issues related to its implementation in Azerbaijan. Support to the anticorruption strategy of Azerbaijan (AZPAC), P. 7. Ma, Y. (2002). Prosecutorial discretion and plea bargaining in the United States, France, Germany and Italy: A comparative perspective. International Criminal Justice Review, 12, 37. Kozachenko, V.I. (2016). Realizatsiia zasady zakonnosti pid chas ukladennia uhod u kryminalnomu provadzhenni Ukrainy ta Nimechchyny [Realization of the principle of legality when concluding agreements in the criminal proceedings of Ukraine and Germany]. Naukovyi visnyk Uzhhorodskoho natsionalnoho universytetu. Seriia «Pravo» [Scientific Bulletin of Uzhgorod National University. The Series Law], 38 (2), 108–109. (in Ukrainian)

[21] Simonovych, D.V. (2016). Doktrynalni zasady struktury ta systemnosti kryminalnoho protsesu Ukrainy: stadii ta okremi provadzhennia [Doctrinal principles of the structure and system of the criminal procedure in Ukraine: stages and individual proceedings] (Monography). Kharkiv: V spravi, P. 295 (in Ukrainian)

In addition, the corresponding agreement is concluded in certain types of criminal proceedings, depending on the complexity of the criminal offense committed. Therefore, a reconciliation agreement may be concluded in criminal proceedings: 1) in respect of criminal misdemeanours; 2) crimes of minor or medium gravity; 3) in the form of private prosecution (Part 3, Art. 469 of the CPC of Ukraine). The reconciliation agreement in criminal proceedings in respect of the authorized officer of a legal person that has committed a criminal violation in relation to which proceedings are taken in respect of the legal person is inadmissible. The plea agreement can be concluded in the proceedings in respect of: 1) criminal misdemeanours, crimes of minor or medium gravity, grave crimes; 2) crimes of especially grave severity, referred to the investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine provided that the suspect or accused expose another person's commission of a crime, referred to the investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine, if information on commission of a crime by such person is proved by evidence (Part 4, Art. 469 of the CPC of Ukraine).

Therefore, due to concluding the agreement, arrangements, most favourable for the parties of the agreement, are made: for the victim – compensation for damage, for the prosecutor – the exposure of the perpetrators and the exposure of grave crimes, for the suspect, the accused – softening of the punishment imposed by the court.

However, the implications of concluding the agreements, provided for the victim, the suspect, the prosecutor in Article 473 of the CPC of Ukraine, should be taken into account, in particular, restriction of their right to appeal against a sentence, waiver from some procedural rights.

The doctrinal study of scientific literature and the practice of applying agreements in criminal proceedings reveals problematic issues that require legislative resolution.

One of the aspects to be considered is the definition of the subjects of initiation and concluding a reconciliation agreement. For example, Part 1 of Article 469 of the CPC of Ukraine specifies that arrangements in respect of the reconciliation agreement may be made independently by victims, suspects or accused or with the assistance of another person as agreed between the parties to criminal proceedings (except for the investigator, prosecutor or judge). However, the investigator, public prosecutor or judge are prohibited to assist the victim and the suspect or accused in making arrangements in respect of the reconciliation agreement. Some scholars

disagree with the statutory prohibition on investigators, prosecutors, judges to participate in making arrangements [22].

Judicial practice should be taken into consideration in solving this issue. For example, checking the reconciliation agreement compliance with requirements of the CPC of Ukraine and the Criminal Code of Ukraine, the court detected that the agreement was concluded on the initiative of the investigator, that is, the person who cannot be its initiator. Given the doubts regarding the compliance of the agreement with the factual circumstances and in the presence of reasonable grounds to believe that the conclusion of the agreement was not voluntary, the court justified the ruling on the refusal to approve the reconciliation agreement (the ruling of the Menskyi District Court of Chernihiv Oblast of March 12, 2013) [23].

Considering the provisions of Part 1 of Article 469 of the CPC of Ukraine, as well as the practice of applying these provisions, it becomes clear that the investigator, the prosecutor should not assist the victim and the suspect in the conclusion of the reconciliation agreement. Arrangements of all issues to be identified in the reconciliation agreement shall be made independently.

In order to solve this problem, the legislator has provided for the possibility of involving another person, agreed by the parties to the criminal proceedings (Part 1, Art. 469 of the CPC of Ukraine). However, the procedural status of this person is not defined legally. For now, scientists have already raised this issue and made proposals regarding the list of requirements for the professional level of such person (mediator) [24]. Moreover, nowadays a draft law «On Mediation» no. 3665 of December 17, 2015 is submitted to Verkhovna Rada of Ukraine, adopted in the first reading and the second reading is under consideration [25]. According to Article 2 of this draft law, the mediator is an independent moderator, who

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[22] Lapkin A.V. (2014). Uchast prokurora v kryminalnomu provadzhennia na pidstavi uhody pro prymyrennia [Participation of the prosecutor in criminal proceedings based on a reconciliation agreement]. Forum prava [Law Forum], 2, 442-447. (in Ukrainian). Domin, Yu. (2013). Instytut uhod u kryminalnomu provadzhenni: vazhlyvi aspekty pravozastosuvannia [Institute of agreements in criminal proceedings: Important aspects of law enforcement]. Visnyk natsionalnoi akademii prokuratury Ukrainy [Bulletin of the National Academy of Public Prosecutor of Ukraine], 4, 13. (in Ukrainian)

[23] Uzahalnennia Vyshchoho spetsializovanoho sudu Ukrainy z rozhliadu tsyvilnykh i kryminalnykh sprav sudovoi praktyky zdiisnennia kryminalnoho provadzhennia na pidstavi uhod vid 22.01.2014 [Brief of the High Specialized Court of Ukraine for consideration of civil and criminal cases of judicial practice in conducting criminal proceedings based on agreements of January 22, 2014]. Zakon i Biznes [Law and Business], 28 (1170). Retrieved from https://zib.com.ua/ua/print/92557-uzagalnennya_vssu_sudovoi_praktiki_zdiysnennya_kriminalnogo_.html (in Ukrainian)

[24] Novak, R.V. (2015). Kryminalne provadzhennia na pidstavi uhod v Ukraini [Criminal proceedings based on agreements in Ukraine] (Dissertation for the degree of Candidate of Juridical Sciences (Ph.D.). Kharkiv, P. 10 (in Ukrainian)

[25] The Verkhovna Rada of Ukraine. (2015). On mediation (Draft Law of Ukraine no. 3665 of January 17, 2015). Zakonodavstvo Ukrainy [Legislation of Ukraine]. Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=3665&skl=9. (in Ukrainian)

assists the parties to resolve the dispute through mediation, while Article 16 provides for requirements for obtaining the status of a mediator, in particular, the mediator may be an individual who has attained twenty five years of age, has higher or vocational education and has passed professional mediation training of 90 academic hour initial training, including at least 45 academic hours of practical training.

From the scientific perspective, the institution of mediation is the most promising form of alternative regulation of criminal-legal conflicts [26]. Moreover, many scholars consider solving the problem issues regarding the introduction of mediation in criminal justice of Ukraine. In order to support this novelty, it should be emphasized that generally mediation or restorative justice is an alternative method of resolving disputes. Nevertheless, precautions should be stated regarding the activities of mediators in the criminal proceedings, as provided for in Article 3 of the draft law «On Mediation,» if the mediation party has committed a grave crime or a crime of especially grave severity, mediation may be conducted solely in relation to the amount and manner of compensation for the damage caused by this crime.

Therefore, the introduction to the national legislation of such a special form as criminal proceedings based on agreements is an expedient and necessary step. However, the legal regulation of this institution is imperfect; therefore, the provisions of criminal procedural legislation need to be improved. Nowadays, the judicial practice demonstrates the existence of violations of the CPC of Ukraine on the issues of initiation and conclusion of the reconciliation agreement, since in some cases, this kind of agreement is concluded on the initiative of the investigator, that is, a person who is not allowed to interfere in the process of establishing agreements. In order to solve the problem the procedural status of the mediator (another person agreed by the parties to the criminal proceedings) in respect of participation in criminal proceedings shall be clearly specified. Therefore, the Law of Ukraine «On Mediation» should be adopted, as well as appropriate amendments to the CPC of Ukraine should be made.

[26] Frych, V. Komarnytska, O. (2013). Mediatsiia (prymyrennia) yak alternatyva sudovomu rozhliadu kryminalnykh provadzhen [Mediation (reconciliation) as an alternative to judicial review of criminal proceedings]. Visnyk natsionalnoi akademii prokuratury Ukrainy [Bulletin of the National Academy of Public Prosecutor of Ukraine], 3, 25. (in Ukrainian). Tiurin, H.Ye. (2015). Orhanizatsiyno–pravovi osnovy uchasti prokurora u kryminalnomu provadzhenni na pidstavi uhod [The organizational and legal basis for participation of the prosecutor in criminal proceedings based on agreements] (Monography). Kh.: Pravo, P. 230 (in Ukrainian)

12.4. Criminal proceedings in respect of underage persons

Another manifestation of the differentiation procedural form is the conduct of criminal proceedings in respect of underage persons. The relevance of the issue is evidenced by the dynamics of juvenile delinquency, which remains significant today. However, V. Nazarov emphasizes that age specificities of minors also require strengthening of their legal protection to general justice, application of certain specific rules that create additional guarantees for juveniles in the investigation and in court proceedings without changing or overturning the general procedural form of criminal proceedings [27].

Considering the psychological and physiological specificities of underage persons who committed a criminal offense, the legislator paid special attention to the realization and protection of their rights. Therefore, a special procedure for both pre-trial investigation and judicial proceedings in respect of underage persons is logical and manifested in provisions of separate Chapter 38, "Criminal Proceedings in Respect of Underage Persons," of the CPC of Ukraine.

The legislative establishment of the specificities of conducting pre-trial investigation in respect of juveniles confirm the special concern for underage persons who committed a criminal offense. However, such circumstances indicate the need for continuous improvement of the national legislation and compliance with international legal standards.

The importance of applying some international legal acts in the conduct of criminal proceedings in respect of underage persons should be emphasize. According to paragraph 1 of the letter of the High Specialized Court of Ukraine for Civil and Criminal Cases «On certain issues of conducting criminal proceedings in respect of underage persons,» when conducting criminal proceedings in respect of underage persons, courts shall ensure the exact and steady application of the current legislation, timely and proper consideration of them, be guided by the Constitution of Ukraine, the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine, international treaties, to which the Verkhovna Rada of Ukraine consented to be bound, such as the UN Convention on the Rights of the Child of 20 November 1989, the UN Standard Minimum Rules for the Administration of Juvenile Justice of November 29, 1985 (the Beijing Rules), as well as take into account the practice of the European Court of

[27] Nazarov, V.V. (2013). Kryminalnyi protses Ukrainy: navch. posibnyk [The Criminal Procedure of Ukraine: A teaching manual]. K.: IE Lipkan, P. 461 (in Ukrainian)

Human Rights, introduce their provisions in national law enforcement practice [28].

Adjusting the criminal procedural legislation of Ukraine to international legal acts is aimed at bringing national provisions, including for criminal proceedings in respect of underage persons, in compliance with international and European standards, as well as improving the status of underage persons in criminal proceedings. The relevance of these issues are supported by many grounds, from the public danger of mercenary and violent offenses committed by underage persons to the moral component of the general participation of underage persons in criminal procedure.

The procedural status of an underage suspect is regulated by both general international and special legal documents. General documents are international acts such as the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1966. Special documents are the Declaration on the Rights of the Child (Geneva Declaration) of 1924, the Declaration of the Rights of the Child of 1959, the UN Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (the Beijing Rules), The UN Guiding Principles on the Prevention of Juvenile Delinquency (the Riyadh Guidelines) of 1990, the UN Rules for the Protection of Juveniles Deprived of their Liberty of 1990, the UN Convention on the Rights of the Child of 1989, etc.

International standards for the protection of the rights of the child occur gradually in the legislation of Ukraine. Therefore, *differentiation during pre-trial investigation in the criminal proceedings in respect of underage persons is expressed as follows*.

The specialization of the investigator, who is authorized to conduct pre-trial investigation against underage persons, is determined in Part 2 of Article 484 of the CPC of Ukraine and the specialization of the prosecutor, who is in charge of pre-trial investigation in criminal proceedings against underage persons, is determined in paragraph 3 of the Order of the

[28] Pro deiaki pytannia zdiisnennia kryminalnoho provadzhennia shchodo nepovnolitnikh [On certain issues of conducting criminal proceedings in respect of underage persons] (Letter of the High Specialized Court of Ukraine for Civil and Criminal Cases no. 223-1134/0/4-13 of July 18, 2013). Retrieved from http://zakon.rada.gov.ua/laws/show/v1134740-13. (in Ukrainian)

Prosecutor General of Ukraine "On the organization of prosecutors' activity in criminal proceedings" no. 4 hn of December 19, 2012 [29].

The current CPC of Ukraine provides for additional guarantees of the rights of an underage person: a) the mandatory participation of the defender (para. 1, 2, Part 2, Art. 52, Part 3, Art. 499 of the CPC of Ukraine); b) the participation of the legal representative (Art. 44, 488 of the CPC of Ukraine); c) the participation of a pedagogue, psychologist or a medical practitioner in interviewing an underage suspect or defendant (Art. 491 of the CPC of Ukraine).

The procedures for applying certain measures for ensuring criminal proceedings, such as summoning (Art. 489 of the CPC of Ukraine), measures of restraint (Art. 492, 493 of the CPC of Ukraine) are specified.

The differences in the procedure for pre-trial investigation in criminal proceedings against underage persons are established: a) a special subject of proving (Art. 485 of the CPC of Ukraine); b) investigative (detective) actions conducted with involvement of an underage person are carried out in accordance with the requirements provided for in Articles 226, 227, 490 of the CPC of Ukraine; c) possibility of disjoining proceedings in respect of a criminal offense committed by an underage person (Art. 494 of the CPC of Ukraine); d) a special form of the termination of pre-trial investigation (Art. 497, Part 5, Art. 499 of the CPC of Ukraine).

Paragraph 2 of Chapter 38 of the CPC of Ukraine provides for application of compulsory educational measures on underage persons who have not attained the age of criminal discretion.

CONCLUSIONS

Therefore, it should be emphasized that in view of ensuring the rights of participants to criminal proceedings, in particular an underage suspect, the importance of compliance with not only legal regulations of the legislation of Ukraine, but also with international treaties shall be provided for in regulations of the CPC of Ukraine. Moreover, providing a legislative framework will contribute to frequent application of these provisions by the courts of Ukraine in the future. However, as practice shows, Ukraine is only at the stage of bringing its legislation in compliance with ratified international legal acts in the field of human rights protection. Both

[29] Pro orhanizatsiiu diialnosti prokuroriv u kryminalnomu provadzhenni [On the organization of prosecutors' activity in criminal proceedings] (Order of the Prosecutor General of Ukraine no. 4 hn of December 19, 2012). Retrieved from http://www.gp.gov.ua/ua/gl.html?_m=publications&_t=rec&id=94102. (in Ukrainian)

positive trends, such as the introduction of international standards in the national legislation, and certain discrepancies exist.

SUMMARY

The article reveals topical issues of the criminal procedural form differentiation. The analysis of scientific approaches to this concept enables to state constant development of this definition, which cannot be stable, because it undergoes changes due to modern processes in connection with the current legal reform. The author indicates two directions of the criminal procedural form differentiation, such as complication and simplification. The article reveals that the necessity of introducing special pre-trial investigation institute is caused by the lack of the procedure for criminal prosecution of persons who refuse to come to the bodies of pre-trial investigation, which makes it impossible to ensure the inevitability of punishment for such persons. The author gives the original definition of special pre-trial investigation as well as proposes some amendments to the CPC of Ukraine. The article analyses some topical issues on the procedure for criminal proceedings based on agreements and in respect of underage persons as differentiation manifestations of pre-trial investigation and judicial proceedings. The features of these types of specific procedures for criminal proceedings are specified and analysed, enabling to reveal problematic aspects the CPC provisions implementation in this part. The ways to improve the CPC of Ukraine regarding problems stated are suggested.

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CHAPTER 13
ENSURING THE SAFETY OF WITNESSES: UKRAINIAN DIMENSION

Opryshko I. V.

INTRODUCTION

Research of person's legal status, protection of its rights and legitimate interests is one of the most urgent questions in modern conditions of Ukrainian state development. Studies on legal status of witnesses whose testimony is one of the most widespread sources of evidence in criminal proceedings deserve special attention. In connection with that witnesses' protection has to become a priority sphere in law enforcement bodies' reforming in Ukraine.

Such famous domestic legal scholars as V.I. Halahan, V.V. Hevko, O.O. Hryn′kiv, V. S. Zelenets′kyy, B.M. Kachmar, Ye.Ye. Kondrat′yev, V.S. Kuz′michov, Ye.D. Luk″yanchykov, A.O. Lyash, V.T. Malyarenko, M.A. Pohorets′kyy, S.M. Stakhivs′kyy, V.M. Tertyshnyk, L.D. Udalova, V.Yu. Shepit′ko, M.Ye. Shumylo and others paid attention to the question of ensuring the safety of witnesses as participants of criminal process in Ukraine, but mentioned authors highlighted this issue episodically and fragmentally in frames of complicated and thorough theoretical researches, what raises urgency of further development of this scientific problem.

According to the Art. 2 of current Criminal Procedural Code of Ukraine (hereinafter – CPC of Ukraine) "assignments of criminal proceedings is defense of individual, society and the State from crimes, protection of criminal proceedings participants' rights, freedoms and lawful interests as well as ensuring quick, full and impartial investigation and judicial examination for everybody who committed a crime to be brought to justice to the extent of his guilt, any innocent was not accused or convicted, any person was not subjected to unreasonable procedural enforcement and so that due process of law was applied to any participant of criminal proceedings" [1].

[1] Kryminal′nyy protsesual′nyy kodeks Ukrayiny: zakon vid 13.04.2012 № 4651-VI. Vidom. Verkhovnoyi Rady Ukrayiny. 2013. № 9–10, № 11–12, № 13. St. 88

It is worth to mention that fundamental rights of Ukrainian citizens are enshrined in Art. 27 of Constitution of Ukraine where it is said that "any person has inalienable right to life. No one shall be arbitrarily deprived of life. The duty of the State is to protect human life. Everyone has the right to protect his or her life and health, the lives and health of other persons against unlawful encroachments"[2]. At the same time rules of Fundamental law establish safeguards of these rights' ensuring as well. One of the main of these safeguards is ensuring the safety of participants of criminal proceedings, including witnesses. Along with that the problem of ensuring the safety of criminal justice's participants, courts' officials and law enforcement officials according to international standards and principles is still urgent in Ukraine.

13.1. Definition of the term «enduring of safety of witnesses» in criminal justice

From O. Yu. Kyrychenko point of view «consideration of safety question as well as any other independent scientific problem, foresees necessity to develop a term (category) of this phenomena. Category "safety" may and above all has to be developed as jeneral academic category that is still not adequately included in category-conceptual system of science. Terms of certain security types, in particular national, international, state, social etc. has to be developed as well, taking into consideration this widest possible in scope and deep on the content category[3].

In this aspect we fully agree with V. S. Zelenets′kyy position that "successful consideration of whole complex of methodological problems that value for theory as well as for practice of crime's countering greatly depends on right definition of outbound theoretical provisions[4].

In connection with that we consider appropriate and necessary to determine terminological content of the issue in question because clear understanding and clear interpretation of such terms' content as "safety measures", "ensuring", "justice", "safety" etc. depends directly on actual

[2] Konstytutsiya Ukrayiny: zakon vid 28.06.1996 № 254k/96-VR. Vidom. Verkhovnoyi Rady Ukrayiny. 1996. № 30. St. 141

[3] Kyrychenko O. Katehorial′no-ponyatiynyy aparat u sferi operatyvno-rozshukovoyi protydiyi zlochynam proty hromads′koyi bezpeky: EUROPEAN POLITICAL AND LAW DISCOURSE, 2015. Volume 2 Issue. S. 316.

[4] Zelenetskyy V. S. Obshchaya teoryya bor′by s prestupnost′yu. Kontseptual′nye osnovy. Khar′kov: Osnova, 1994. S. 170.

solution of the problem of ensuring the security of witnesses as participants of criminal proceedings in Ukraine.

Thus, Explanatory dictionary of Ukrainian language defines term "ensuring" as "providing with material means sufficient for living and necessary for activity, functioning of something; guarantee of anything"[5].

On O. Yu. Kyrychenko's point of view "there are two main approaches to understanding of term "safety". From one side, safety is defined as condition of any medium of danger that does not contain possible for enviroment threat, from the other – feature of safety is inherent in the object securely protected from bad influence. At the same time, in both cases there is a direct relationship with such characteristic of social system as safety that is active focused activity on support of social relations in certain quality state. "Safety" category is a common outbound category on which national security in whole and its certain types in particular is based[6].

The term "safety" is interpreted in Ukrainian language dictionaries as: 1) sacurity, technical specifications and means that eliminate danger, prevent danger[7]; 2) as a state when there is no danger for anybody or anything[8].

There is no coherence in this term's understanding and interpretation among Ukrainian academics at the moment. If we look into current CPC of Ukraine, we see that the definition "ensuring the safety" is not defined there, although in CPC as revised in 1960 such term was determined in Art. 52^1, 52^2 and others.

From A. A. Yunusov's point of view "ensuring the safety of participants of criminal proceedings and other persons is an activity of competent bodies that is aimed on creation of conditions in which there is no danger for life and health of these persons or address the risk"[9]. V. S. Zelenets′kyy and M. V. Kurkin consider that "it necessary to understand under ensuring the safety of subjects of criminal proceedings a set of special measures that are taken by competent law enforcement bodies, realization of which leads to address the risk that existed earlier

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[5] Tlumachnyy slovnyk ukrayins′koyi movy // Uklad. Koval′ova T. V., Kovryha L. P. Kharkiv, 2005. S. 202.

[6] Kyrychenko O. Mentioned work. S. 316.

[7] Russko-ukraynskyy slovar′ termynov po teoryy hosudarstva y prava. Pod obshch. red. N. Y. Panova. Khar′kov, 1993. S. 34.

[8] Tlumachnyy slovnyk ukrayins′koyi movy. S. 435.

[9] Yunusov A. A. Oberezhenye uchastnykov uholovnoho protsessa y ykh blyzhnykh: dys. … kandydata yuryd. nauk. N. Novhorod, 1998. S. 16.

and thus ensures its removal, as well as prevents damage to certain persons, objects or other values, protected by the State in accordance with legal procedure"[10]. From O. O. Hryn′kiv's point of view "ensuring the safety of participants of criminal justice is realization of a complex of necessary actions (measures) by law authorized (competent) bodies, aimed on prevention of possible damage to participants of criminal justice, in order to do proper justice"[11].

As we see there is no unity and coherence in interpretation of basic terms of these problematic and urgent issues among Ukrainian academics at the moment that caused a broad discussion on pages of legal periodicals regarding mentioned category-conceptual system of this problematic.

Supreme Court in its case-law Compilation on mentioned issue noted that "the term "ensuring the safety" includes execution of legal, organization-technical and other measures, aimed on protection of life, health and property of individuals that had been taken under state protection against unlawful assaults, by law enforcement bodies, to create necessary conditions in order to do proper justice[12].

In the Law of Ukraine "On Ensuring the Safety of Individuals that Take Part in Criminal Justice" of 23 December 1993 No. 3782-XII the definition of this term is given. According to the Art. 1 "Definition of ensuring the safety of individuals that take part in criminal justice" ensuring the safety of individuals that take part in criminal justice that means in exposing, prevention, termination, solution or investigation of crimes as well as in judicial examination of criminal proceedings, is taking legal, organization-technical and other measures, aimed on protection of life, housing, health and property of these individuals against unlawful assaults, by law enforcement bodies, to create necessary conditions in order to do proper justice (Art. 1 amended by the Law of Ukraine of 13 April 2012 No. 4652-VI)[13].

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[10] Zelenets′kyy V., Kurkin M. Osnovni polozhennya vchennya pro zabezpechennya bezpeky sub″yektiv kryminal′noho protsesu, shcho vedut′ borot′bu z orhanizovanoyu zlochynnistyu // Prokuratura. Lyudyna. Derzhava. 2004. № 4 (34). S. 38.

[11] Hryn′kiv O. O. Ponyattya zabezpechennya bezpeky osib, yaki berut′ uchast′ u kryminal′nomu sudochynstvi // Formuvannya pravovoyi derzhavy v Ukrayini. Problemy i perspektyvy: materialy KH Vseukr. nauk.-prakt. konf. (kvit. 2008 r.). Ternopil′, 2008. S. 522.

[12] Praktyka zastosuvannya zakonodavstva, shcho peredbachaye derzhavnyy zakhyst suddiv, pratsivnykiv sudu i pravookhoronnykh orhaniv ta osib, yaki berut′ uchast′ u sudochynstvi // Visn. Verkhovnoho Sudu Ukrayiny. 1999. № 6(16).

[13] Pro zabezpechennya bezpeky osib, yaki berut′ uchast′ u kryminal′nomu sudochynstvi: zakon vid 23.12.1993 № 3782-XII // Vidom. Verkhovnoyi Rady Ukrayiny. 1994. № 11. St. 51.

From O. O. Zaytsev's point of view "ensuring the safety of participants of criminal justice is a part of state policy that is why the term "ensuring the safety" need to be complemented by identification "state" as namely the state acts as the main institute that is obliged to ensure protection of rights and lawful interests of all individuals that maintain criminal proceedings that is aimed on achievement of criminal justice's tasks"[14]. We support this position.

According to international legal standards in this sphere right to ensuring the safety is enshrined in Universal Declaration of Human Rights of 1948 "everyone has the right to life, liberty and security of person" (Art. 3)[15]. International Covenant on Civil and Political Rights of 1966 also establishes that "Everyone has the right to liberty and security of person" (para. 1 Art. 9)[16]. It is also laid down in para. 3 Art. 13 of Declaration on the Protection of All Persons from Enforced Disappearance, para. 1 Art. 12 of International Convention for the Protection of All Persons from Enforced as well as in the Set of principles for the protection and promotion of human rights through action to combat impunity according to which effective remedies for ensuring the safety, physical and psychological well-being shall be taken[17].

Respect for human rights, development and implementation of optimal system of witnesses' safety in Ukraine together with other state authorities is also established among strategy priorities in the Strategy of bodies' development of MIA's system on the period till 2020[18].

13.2. Legal (procedural) status of witnesses as a guarantee of their safety during criminal justice

In this regard we support O. M. Kalachova's opinion that "establishment of legal guarantees of protection and realization of participants' of criminal justice rights is among the most urgent questions

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[14] Zaytsev O. O. Teoretycheskye y pravovye osnovy hosudarstvennoy zashchyty uchastnykov uholovnoho sudoproyzvodstva v Rossyyskoy Federatsyy: dys. … d-ra yuryd. nauk. M., 1999. S. 24.

[15] Universal Declaration of Human Rights, adopted by Resolution 217 A (III) of General Assembly of UNO of 10.12.1948. URL: https://www.un.org/en/universal-declaration-human-rights/ (date of request: 02.04.2019).

[16] International Covenant on Civil and Political Rights, adopted by Resolution 2200 A (XXI) of General Assembly of 16.12.1966. URL: https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (date of request: 02.04.2019).

[17] Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher. E/CN.4/2005/102/Add.1 URL: https://digitallibrary.un.org/record/541829/files/E_CN.4_2005_102_Add.1-EN.pdf?version=1 (date of request: 02.04.2019).

[18] Pro zatverdzhennya Stratehiyi rozvytku orhaniv systemy MVS na period do 2020 roku: rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 15.11.2017 №1023-r. URL: http://mvs.gov.ua/ua/pages/strategiya_2020.htm (date of request: 02.04.2019).

of modern science and practice of crminal procedural activity. One of the most important of them is individual's timely aquairement of procedural or legal status that meets its legal situation. Its real possibilities to aquaire procedural rights and to realize them as well as timely and legaly understand and execute its procedural obligations depend on how adequacy individual's procedural status is defined. Nonetheless discrepancy of individual's procedural status in criminal justice to de facto situation and circumstances of criminal proceedings creates contradictions in criminal process theory and law enforcement activity of pre-trial investigation bodies[19]".

Obviously, that originally correctly defined individual's status as a witness in criminal process depends on its further safety as a participant of ctiminal justice. In fact Criminal Procedural Code of Ukraine (CPC of Ukraine) reduced procedural aspect of mentioned institute, left its regulation by basic laws and numerous, including departamental, legislation of Ukraine. Thus, several articles of current CPC of Ukraine normatively enshrine the possibility to ensure the safeness of these individuals, in connection with that witnesses that need ensurement of their personal safety, do not duly notified that they have such procedural status and about means of its realiation in criminal process.

Witness as one of the most important participants of criminal proceedings and according to rules of para. 1 Art. 65 CPC of Ukraine is an individual that knows or may know circumstances that are subjects to proof during criminal proceedings, and that had been called to give evidence. While international legal definition of witness differs from its legal definition in CPC of Ukraine and interprets according Art. 6 of Convention for the Protection of Human Rights and Fundamental Freedoms and Recommendations of Council of Europe No. R (97) 13 concerning intimidation of witnesses and the rights of the defense, adopted by the Committee of Ministers of September 1997[20]. Thus, according to mentioned Recommendations of Council of Europe witness is means any person, irrespective of his/her status under national criminal procedural law, who possesses information relevant to criminal proceedings. This

[19] Kalachova O. M. Vyznachennya slidchym protsesual'noho statusu osib, shcho berut' uchast' u dosudovomu provadzhenni: dys. … kand. yuryd. nauk. Luhans'k, 2008. C. 5.

[20] Recommendations of Council of Europe No. R (97) 13 concerning intimidation of witnesses and the rights of the defence, adopted by the Committee of Ministers of 10.09.1997. URL: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804c4a0f (date of request: 02.04.2019).

definition also includes experts as well as interpreters acquiring broader understanding and does not consistent with rules of para. 1 Art. 65 of CPC of Ukraine, in connection with what the last has to be amended according to the demands of the EC.

Based on the analysys of CPC's of Ukraine rules witnesses in criminal justice of Ukraine, along with individuals stated in para. 1 Art. 65, may be also officers of law enforcement bodies , individuals engaged to criminal proceedings in witnesses of search' status (para. 7 Art. 223); individual that knows or may know circumstances that are subjects to proof during criminal proceedings from hearsay (Art. 97); individuals that act undercover in criminal enviroment by operational units of Ukraine (Art. 256, 272, 275) etc.

We share V. M. Lushpiyenko's opinion that "it is more appropriate to use category "legal status" that defines subject's situation in legal relations to analyze witness's status"[21].

Legal status of witnesses as subjects to whom safety measures may be applied in criminal justice shall be defined as a system of their rights and obligations, enshrined in legislation of Ukraine, that allow them to realize their functions as effectively as possible during application personal safety measures to them.

Important element of criminal process that is broadly discussed on pages of legal periodicals is a moment of obtaining by the witness as a participant of criminal justice, its legal (procedural) status, because possibility to apply safety measures to him/her is connected exactly with this moment. From our point of view, this moment is possible to identify, based on legaly defined term "witness", because in the CPC of Ukraine it is used in two meanings: firstly, as individual that knows or may know circumstances that that are subjects to proof during criminal proceedings; secondly, as individual that is called to testify on factual circumstances of the case that are known to him/her[22]. The term "witness" may also be used is such meaning: "as individual that may know any facts that matter for investigation and solution of criminal, administrative or civil case that that is called o testify"[23].

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[21] Lushpiyenko V. M. Pravovyy status svidka u kryminal'nomu protsesi Ukrayiny ta inozemnykh derzhav // Derzhava ta rehiony. 2017. № 1 (55). S. 120. (Seriya: Pravo).

[22] Slovnyk ukrayins'koyi movy. Akademichnyy tlumachnyy slovnyk URL: http://sum.in.ua/s/neghlasnyj (date of request: 02.04.2019).

[23] Bazhanov M. Y. Svydetely, ykh prava y obyazannosty po sovet·skomu uholovno-protsessual'nomu zakonodatel'stvu. M.: Hosyuryzdat. 1955. S. 27.

From O. P. Kuchyns'ka's point of view, "a person becomes a witness right after he/she is officialy called for questioning. And exactly from this moment he/she obtains rights as well as obligations, foreseen in current criminal procedural legislation are imposed on him/her"[24]. We consider that mentioned opinion is not undeniable and unconditional.

Thus, according to Art. 3 of CPC of Georgia witness is an individual that may know data, necessary for establishment of facts of the criminal case. The individual obtaine status, rights and obligations of a witness after warning about criminal liability and taking an oath[25]. In this case in Georgia, different from CPC of Ukraine as well as from Ukrainian academics' opinions, a moment when witness obtains procedural status is legaly enshrined, that, certanly, deserves attention.

In our opinion, it is not right to call an individual who had been called for questioning to the investigator as a witness, but it was established that he/she does not know facts that are important for the criminal proceedings, as witness. Hence, witness is defined as individual who was called in order, prescribed by CPC of Ukraine, who knows circumstances that value for the criminal proceedings and has to inform about known circumstances during questioning. Such understanding allows to solve question on possibility to consider an individual as a witness only from the moment of completion of his/her first questioning as a witness. Meanwhile it is necessary to keep in mind that in some cases individual who had been called for questioning to the investigator does not possess relevant information and investigator becomes known about it only during individual's questioning.

Concerning this issue S. O. Zayika appropriately noted that "procedural status of individual established correctly provides him/her with real possibilities to obtain certain procedural rights and to realize them, as well as to actually understand his/her procedural obligations. However, discrepancy of procedural status of de facto situation of certain participants of criminal procedural activity creates some contradictions in theory of criminal process and law enforcement activity of judicial and lw enforcement bodies. Improvement of procedural status of subjects of

[24] Kuchyns′ka O. P. Protsesual′nyy status svidkiv: deyaki osoblyvosti za novym KPK // Yurydychnyy chasopys Nats. akad. vnutr. sprav. 2013. № 1. S. 298.

[25] Criminal Procedure Code of Georgia (2009, amended 2016) (English version). URL: http://legislationline. org/documents/section/criminal-codes (date of request: 02.04.2019).

criminal procedural activity is one of the main directions of academic researches in criminal process sphere currently"[26].

In our strong belief, individuals obtain criminal procedural status of witnesses during criminal proceedings according to the decision of authorized procedural bodies. As it is known, criminal procedural (sectoral) status of witnesses as complex of of their procedural rights and obligations in criminal justice is enshtined in Art. 66 in CPC of Ukraine: "Right and obligations of witness". Legal status of witnesses as individuals that have been already taken under protection, is determined in particular laws of Ukraine and in some departamental legal acts (for example, in Art. 5 of the Law of Ukraine "On ensuring the safety of individuals that take part in criminal justice", in Art. 19 of the Law of Ukraine "On state protection of court and law enforcement bodies employees" etc.) [27].

Thus, summerizing, we can conclude that legal status of witnesses as subjects regardings which safety measures in criminal justice of Ukraine may be ensured, is regulated by different laws of Ukraine and it is different for different categories of subjects of ensuring the safety; different departamental subjects by different means of ensuring safety carry out ensuring the safety of participants of criminal justice, including witnesses. Regarding legal basis of the subject of the research – it is normatively divided between different departments.

13.3. Problems of witness' legal (procedural) status of obtaining by particular categories of individuals in criminal justice

Problematic issues in this sphere include possibilities of obtaining procedural status of witnesses by witnesses of search, arrest, seizure, a line-up etc. and ensuring their safety in mentioned status during criminal justice, as in para. 7 Art. 223 of CPC of Ukraine is stated that during judicial review witnesses of search, arrest, seizure, a line-up etc. may be questioned as witnesses of certain investigative (inquisitorial) action. Hence the question arises on procedural status of such individuals as witnesses and its special features.

According to the para. 7 of Art. 223 of CPC of Ukraine victim, relatives of suspected, accused and victim, officers of law enforcement

[26] Zayika O. S. Naukove zabezpechennya dosudovoho rozsliduvannya: problemy teoriyi ta praktyky // zb. tez dop. V Vseukr. nauk.-prakt. konf. (Kyiv, 8 lyp. 2016 r.). Kyiv, 2016. S. 80.

[27] Pro derzhavnyy zakhyst pratsivnykiv sudu i pravookhoronnykh orhaniv: zakon vid 23.12.1993 № 3781-XII // Vidom. Verkhovnoyi Rady Ukrayiny. 1994. № 11. St. 50.

bodies as well as individuals interested in results of criminal proceedings can not be witnesses.

Nevertheless, O.P. Ostriychuk considers that "para. 7 of Art. 223 of CPC of Ukraine allows questioning of witnesses of search, arrest, seizure, a line-up etc. as witnesses of certain investigative (inquisitorial) action. At the same time in law there is no statement about questioning in this status during pre-trial investigation. In CPC of Ukraine there is no legislative reglamentation of questioning order of witnesses of search, arrest, seizure, a line-up etc. as witnesses of certain investigative (inquisitorial) action. In O. P. Ostriychuk's opinion "witness in criminal proceedings and witnesses of certain investigative (inquisitorial) action differ from each other according to their legal status of individual. Definition of term "witness" is given in Art. 66 of CPC of Ukraine. Even shallow analysis of mentioned rule of procedural law we see that witnesses of search, arrest, seizure, a line-up etc. as witnesses of certain investigative (inquisitorial) action does not fall under normative definition of witness. Witnesses of search, arrest, seizure, a line-up etc. do not know circumstances that are not subjects of proof in criminal proceedings. Except that empowering of witnesses of search, arrest, seizure, a line-up etc. with legitimacy of witnesses would be wrong. Witness gives testimony on circumstances that are known to him/her and are subject of proof, while witness of search, arrest, seizure, a line-up etc. testifies correctness of investigative action's conduct and its results' fixing. Thus, witnesses of search, arrest, seizure, a line-up etc. and witness are two different procedural figures by their purpose"[28]. O. L. Buleyko stands on the same position and states that "wide practice of questioning of witnesses of search, arrest, seizure, a line-up etc. as witnesses is anything other but creation of "artificial witnesses". Such individuals can not inform any new facts, but only confirm those that have been already set out in the protocol of investigative action that had been conducted with their participation"[29].

It is worth to mention that there is no institute of witnesses of search, arrest, seizure, a line-up etc. in legislation of United States of America as well as in many other countries[30]. Also this institute was not almost kept in Commonwealth of Independent States and exsists in limited form in small

[28] Ostriychuk O. P. Pokazannya yak protsesual′ne dzherelo dokaziv u kryminal′nomu provadzhenni: dys. … kand. yuryd. nauk. Kyiv, 2016. S. 119.

[29] Buleyko O. L. Uchast′ ponyatykh u kryminal′nomu protsesi: monohrafiya. Kyiv.: KNT, 2010. S. 140.

[30] Makhov V. N., Pyeshkov M. A. Uholovnyy protsess SSHA (dosudebnye stadyy). M., 1998. S. 155.

number of investigative actions only in Georgia, Latvia, Lithuania and Estonia.

After CPC of Ukraine entered into force questions of individuals' procedural status as witnesses that know or may know circumstances that are subjects of proof during criminal proceedings from hearsay (Art. 97 CPC of Ukraine) also became a problem.

This question is urgent also from the point of view of ensuring the safety measures to such individuals because providing them with procedural status of witness is not undeniable and unconditional. It is worth to mention that Art. 97 of CPC of Ukraine was criticized on pages of legal periodicals as such that contradicts rules of Constitution of Ukraine and international legal acts in the sphere of human rights protection. Thus, V. T. Nor noted on this issue that "if witness can not inform about the source from which he/she obtained information on circumstances covered by subject of proof in criminal case ("heared somewhere", "somebody told", "everybody knows that" etc.), such data can not be evidence"[31].

Problem of definition of legal (procedural) status of individuals that had been infiltrated by operational units of Ukraine and investigators undecover in criminal enviroment with usage of confidential cooperation according to current legislation and ensuring their safety during criminal justice is a substantial problem in legislation of Ukraine. It deals with cases, foreseen in Art. 256, 272 and 275 of CPC of Ukraine. In this aspect urgent issue is a question of admissibillity and legitimacy of the information, gathered by them, its proofness in criminal justice and, in whole, whether these individuals were authorized to conduct investigative actions and on what legal basis such authority is exercised and whether mentioned individuals may have witness status with a right to ensuring personal safeness. In the case on constitutional request of State Security Service of Ukraine on official interpretation of para. 3 of Art. 62 of Constitution of Ukraine (Case No. 1-31/2011 of 20, October 2011 No. 12-рп/2011) Constitutional Court decided that "accusition in crime commitment can not be based on factual data received as a result of investigation activity of authorized person without adherance to constitutional provisions or with violation of order, prescribed by law as well as received by means of commitment of concerted actions regarding

[31] Nor V. T. Svidok u kryminal′nomu protsesi Ukrayiny: kolo osib, predmet pokazan′ ta svidots′kyy imunitet. Vybrani pratsi/ uporyad.: V. V. Lutsyk, A. A. Pavlyshyn. Kharkiv: Pravo, 2015. S. 665.

their gathering and fixation with taking actions, foreseen in the Law of Ukraine "On investigative activity" by an individual that was not authorized to maintain such activity"[32].

From position of mentioned Decision of Consitutional Court of Ukraine on official interpretation of para. 3 of Art. 62 of Constitution of Ukraine (Case No. 1-31/2011 of 20, October 2011 No. 12-рп/2011) and Art. 95 of CPC of Ukraine question of legal status of individuals that had been infiltrated by authorized bodies in criminal enviroment as well as admissibility, appropriateness and credibility of their testimony in criminal proceedings is still questionable and problematic.

Except that current CPC of Ukraine does not foresee effective mechanism of ensuring personal safety of individuals that conducted secret investigative actions (hereinafter – SIA) or were involved to their conduction in case of necessety of their questioning as witnesses during criminal justice and does not disclose their legal status.

M. V. Lotots'kyy noted on this subject that "the list of individuals that may be involved to conduction of secret investigative action is not foreseen in legislation, but, on our point of view, they include individuals that are not officers of operational units. As a rule they are previously convicted persons that had been exempted from criminal liability, to whom risks administrative or criminal punishment, persons under administrative supervision. Often "seller/buyer" of narcotic drugs are individuals that are suspected in criminal proceedings. Giving "voluntary" consent in SIA participation is accompanied by physical and moral pressure. In our opinion engagement of such persons in SIA participation is not only illegal, but also immoral[33]".

D. B. Serhyeyeva correctly noted on this issue that "results of analysis of provisions of Chapter 21 of CPC of Ukraine give grounds to make a conclusion that, nevertheless, CPC of Ukraine foresees possibility for the investigator to use information, received as a consequence of confidencial cooperation with other individuals or to involve these individuals to secret investigative actions conduction "in cases, foreseen by the Code" (para. 1 of Art. 275 of CPC of Ukraine), but such cases are not mentioned by legislator, and usage of information, received as a consequence of

[32] Visn. Konstytutsiynoho Sudu Ukrayiny. 2011. № 6. S. 155–163.

[33] Lotots′kyy M. V. Zakonnist′ zaluchennya «inshykh osib» do uchasti u nehlasnykh slidchykh (rozshukovykh) diyakh (kontrol′ za vchynennyam zlochynu) // Nauk.-informats. visn. Ivano-Frankiv. un-tu prava imeni Korolya Danyla Halyts′koho: 2016. № 2(14). S. 224. (Seriya Pravo).

confidencial cooperation during secret investigative actions conduction as well as involvement of individuals to cooperation during secret investigative actions conduction does not meet essential characteristics of secret investigative actions. Confidential cooperation usage is not secret investigative action, but measure of interim character"[34].

This is despite the fact that Ukrainian legislator did not provide criteria of division of SIA and operational-investigative measures in operational-investigative activity (hereinafter – OIA), inexplicably established in legislation realization of OIA measures through CPC of Ukraine what initiated secret pre-trial investigation in Ukraine.

Obviously, individual authorized to execute such task in OIA and his/her legal (procedural) status has to be clearly identified in legislation of Ukraine. Mentioned circumstance significantly complicates ensurament of safety of such individuals as witnesses in criminal justice of Ukraine.

Nevertheless question of individuals' legal status determination in the system of law enforcement bodies, established in para. 1 of Art. 1 of the Law of Ukraine "On state protection of court and law enforcement bodies employees", to whom safety measures may be applied in criminal justice, is problematic in Ukraine. It is a question that terms "law enforcement bodies", "legal status of officer of law enforcement body" etc. are not disclosed in legal field of Ukraine that does not give a possibility to clearly identify circle of subjects of state protection regarding whom safety measures may be applied in criminal justice in whole, in particular on the stage of criminal proceedings.

V.H. Drozd, A. V. Ponomarenko, M.S. Tsutskirydze and others correctly noted on this issue that "there are no clear normative outlined criteria in legislation of Ukraine according to which certain activity or bodies may be classified as law enforcement. Thus, in the Law of Ukraine "On National Security Framework of Ukraine"[35] law enforcement bodies are identified as "public authorities that have been assigned to maintain law enforcement functions by Constitution and laws of Ukraine", and in the Law of Ukraine "On democratic civil control on Military organization

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[34] Serhyeyeva D. B. Nehlasne spivrobitnytstvo u kryminal′nomu protsesi // Visn. krymin. sudochynstva. 2016. № . S. 50, 52-53.

[35] Pro osnovy natsional′noyi bezpeky Ukrayiny: zakon vid 19.06.2003 № 964-IV // Vidom. Verkhovnoyi Rady Ukrayiny. 2003. № 39. St. 351.

and law enforcement bodies of Ukraine"[36] as "state bodies that maintain law enforcement or public-security functions according to the legislation". Nevertheless terms "public-security functions", "law enforcement activity" and "law enforcement functions" are also not defined legaly[37].

In connection with that M. V. Koval' proposes to define legaly status of law enforcement officer in separate legal act – Law of Ukraine "On status of law enforcement officer"[38]. What concerns particular measures of ensuring the safety of witnesses in criminal justice of Ukraine, their enumeration and legal definition are absent in CPC of Ukraine. L. D. Udalova correctly noted on this issue that "absence of the list of safety measures and common rules of their usage in the CPC of Ukraine creates problems that do not allow participants of criminal proceedings to maintain their right on effective ensuring of their safety. Common rules of application of safety measures of criminal proceedings should be included to CPC of Ukraine and have a special place in system of its rules. With this aim we propose to add Chapter 3 of CPC of Ukraine "Court, Parties and Other Participants of Criminal Process" with separate paragraph "Safety of participants of criminal process" that has to define common rules regarding application of safety measures for participants of criminal process, in particular: a list of safety measures that may be used during criminal proceedings; a list of participants of criminal process that have the right on ensuring safety and rights of individuals to whom safety measures are applied; definition of common procedure of application of safety measures, order of making and execution of a decision; common rules of change, cancel or appeal of safety measures application to participants of criminal proceedings"[39].

V. H. Drozd, A. V. Ponomarenko, M. S. Tsutskirydze and others consider absence of a single Law of Ukraine on mentioned issue with maximum list of safety measures of participants of criminal justice and

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[36]Pro demokratychnyy tsyvil′nyy kontrol′ nad Voyennoyu orhanizatsiyeyu ta pravookhoronnymy orhanamy Ukrayiny: zakon vid 19.06.2003 № 975-IV // Vidom. Verkhovnoyi Rady Ukrayiny. 2003. № 46. St. 366.

[37]Zabezpechennya bezpeky svidkiv yak uchasnykiv kryminal′noho sudochynstva v Ukrayini: problemy ta shlyakhy vdoskonalennya: monohrafiya / V. H. Drozd, A. V. Ponomarenko, M. S. Tsutskirydze ta in.; Derzh. nauk.-dosl. in.-t. Kyiv: Vydavnychyy dim «Hel′vetyka», 2018.S.84.

[38]Koval′ M. Shchodo pytannya pro zakonodavche vyznachennya statusu pratsivnyka pravookhoronnoho orhanu v Ukrayini // Aktual′ni problemy upravlinnya ta sluzhbovo-operatyvnoyi diyal′nosti orhaniv vnutrishnikh sprav u suchasnyy period rozvytku derzhavnosti Ukrayiny: materialy Vseukr. nauk.-prakt. konf. (Kyiv, 26 zhovt. 2007 r.). Kyiv: Lesya, 2008. S. 220–223.

[39] Udalova L. Current issues of ensuring security of the criminal proceeding participants. ISSN 2410-3594 //. Scientific Journal of the National Academy of Internal Affairs. 2017. № 1(102). P. 16.

organizational order of their application; absence in CPC of Ukraine separate chapter where criminal procedural aspect of their application would be regulated; absence in Ukraine of the Witness Protection Program unlike many European countries etc. refers to legal misjudgments and gaps in these problematic questions in Ukraine. At the same time, we agree with opinion of mentioned authors that in Ukraine there is no statistical record of safety measures that were applied in the State in whole, there is no body that would coordinate work of units of mentioned bodies on witnesses' protection. Supreme Court of Ukraine consolidated case-law on abovementioned question in the past century (almost 20 years ago) in connection with what modern analysis of practice and experience of applied measures of ensuring the safety of witnesses as participants of criminal justice, especially on such financially expensive types as: medical change of appearance; change of documents; resettlement in other place of living etc. is absent. Many safety measures foreseen by basic laws do not apply on practice because of different reasons including absence of appropriate regulation of order and circumstances of their application, order of financing etc.

CONCLUSION

Legal status of witnesses as subjects concerning which safety measures may be applied in criminal justice of Ukraine regulates by different laws of Ukraine and it is different for different categories of subjects of ensuring the safety, ensuring the safety of participants of criminal justice, including witnesses, different authorized subjects maintain different means of ensuring safety. Legal basis on the question of the study is normatively divided between different departments.

Problematic issues of this sphere also include possibilities to obtain procedural status of witnesses by witnesses of search, arrest, seizure, a line-up etc. and ensuring their safety in mentioned status in the process of criminal justice, as in para. 7 of Art. 223 of CPC of Ukraine is noted that witnesses of search, arrest, seizure, a line-up etc. may be questioned as witnesses of certain investigative (inquisitorial) action. Hence the question arises on procedural status of such individuals as witnesses and its special features.

Except that current CPC of Ukraine does not foresee effective mechanism of ensuring personal safety of individuals that conducted secret

investigative actions (hereinafter – SIA) or were involved to their conduction in case of necessety of their questioning as witnesses during criminal justice and does not disclose their legal status.

Ukrainian legislator did not provide criteria of division of SIA and operational-investigative measures in operational-investigative activity (hereinafter – OIA), inexplicably established in legislation realization of OIA measures through CPC of Ukraine what initiated secret pre-trial investigation in Ukraine.

In Ukraine problematic question includes possibilities of application safety measures to individuals that can not be questioned as witnesses with obtaining corresponding procedural status in process of criminal justice, list of which is established in para. 2 of Art. 65, point 3 para. 1 of Art 66 of CPC and individuals, outlined in Art. 63 of Constitution of Ukraine that have witness immunity. As it is known, in mentioned cases legislation of Ukraine either, in fact, prohibits questioning of such individuals as witnesses in criminal proceedings with providing them with relevant legal (procedural) status, or significantly limits possibilities of their questioning in this status. A substantial problem in current legislation of Ukraine that needs legal solution is a problem of definition of legal (procedural) status of individuals that had been infiltrated by operational units of Ukraine and investigators undecover in criminal enviroment with usage of confidential cooperation according to current legislation and ensuring their safety during criminal justice. It deals with cases, foreseen in Art. 256, 272 and 275 of CPC of Ukraine. In this aspect urgent issue is a question of admissibillity and legitimacy of the information, gathered by them, its proofness in criminal justice and, in whole, whether these individuals were authorized to conduct investigative actions and on what legal basis such authority is exercised and whether mentioned individuals may have witness status with a right to ensuring personal safeness.

Nevertheless, the question of individuals' legal status determination in the system of law enforcement bodies, established in para. 1 of Art. 1 of the Law of Ukraine "On state protection of court and law enforcement bodies employees", to whom safety measures may be applied in criminal justice, is problematic in Ukraine. It is a question that terms "law enforcement bodies", "legal status of officer of law enforcement body" etc. are not disclosed in legal field of Ukraine that does not give a possibility to clearly identify circle of subjects of state protection regarding whom safety measures may be applied in criminal justice in whole, in particular on the stage of criminal proceedings.

After CPC of Ukraine entered into force in 2012 questions of individuals' procedural status as witnesses that know or may know circumstances that are subjects of proof during criminal proceedings from hearsay (Art. 97 CPC of Ukraine) also became a problem. This question is urgent also from the point of view of ensuring the safety measures to such individuals because providing them with procedural status of witness is not undeniable and unconditional as well as other problematic questions that were considered by us and need legal regulation.

Summing up we can make a conclusion that in current circumstances of reforming of legal system of Ukraine and renovation of domestic criminal proceedural legislation existing academic theoretical groundworks in this area does not exhaust and does not solve mentioned complicated scientific-practice problems of witnesses' protection, but rather create fundumental base for its further conceptual redefining and further academic researches and projections, and current procedural legislation of Ukraine in this sphere needs renovation and improvement.

SUMMARY

Problems of safety of participants of criminal justice in Ukraine from real danger and threats from criminals' side, especialy witnesses, are analyzed. These problems are urgent in modern circumstances and their solusion depends on effectiveness of jusctice in whole. Solution of mentioned problems gives opportunity to prosecute individuals who had committed severe and especialy severe crimes in organized groups and criminal organizations. Legislation of Ukraine, in particular criminal procedural, has to be oriented on that.

Except that law enforcement bodies has to make everything so that every human would be confident in its safety as well as in that threats on his/her address from the criminals' side will be only threats and guilty will be prosecuted.

While considering this problematic positions of domestic academics on definition of term "ensuring the safety of witnesses" in criminal justice, legal (procedural) status of witnesses as guarantees of ensuring of their safety in criminal process, problems of obtaining of legal (procedural) status of witnesses by certain categories of individuals in the process of criminal proceedings etc. are covered and analyzed, and ways of their solution are outlined. In particular, it is proposed to define terminological filling of mentioned problem. Clear understanding and clear interpretation of content of such terms as "safety measures", "ensuring", "justice",

"safety" etc. depend on solution of problems of ensuring the safety of witnesses as participants of criminal proceedings in Ukraine. Special features and feasibility of obtaining of legal status of witnesses by particular categories of individuals were considered and legal gaps and misjudgments of Ukrainian legislation in these issues were emphasized.

Conclusions that were made may be useful for practicing officers of law enforcement bodies and may serve as a basis for further academic researches and projections in this sphere.

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28. Buleyko O. L. Uchastʹ ponyatykh u kryminalʹnomu protsesi: monohrafiya. Kyiv.: KNT, 2010. 168 s.
29. Makhov V. N., Pyeshkov M. A. Uholovnyy protsess SSHA (dosudebnye stadyy). M., 1998. 208 s.
30. Nor V. T. Svidok u kryminalʹnomu protsesi Ukrayiny: kolo osib, predmet pokazanʹ ta svidotsʹkyy imunitet. Vybrani pratsi/ uporyad.: V. V. Lutsyk, A. A. Pavlyshyn. Kharkiv: Pravo, 2015. S. 662-668.
31. Visn. Konstytutsiynoho Sudu Ukrayiny. 2011. № 6. S. 155–163.
32. Lototsʹkyy M. V. Zakonnistʹ zaluchennya «inshykh osib» do uchasti u nehlasnykh slidchykh (rozshukovykh) diyakh (kontrolʹ za vchynennyam zlochynu). Nauk.-informats. visn. Ivano-Frankiv. un-tu prava imeni Korolya Danyla Halytsʹkoho: 2016. № 2(14). S. 224-229. (Seriya Pravo).
33. Serhyeyeva D. B. Nehlasne spivrobitnytstvo u kryminalʹnomu protsesi. Visn. krymin. sudochynstva. 2016. № 4. S. 47-54.
34. Pro osnovy natsionalʹnoyi bezpeky Ukrayiny: zakon vid 19.06.2003 № 964-IV. Vidom. Verkhovnoyi Rady Ukrayiny. 2003. № 39. St. 351.
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CHAPTER 14
ADMINISTRATIVE AND JURISDICTIONAL ACTIVITY OF UKRAINIAN LAW ENFORCEMENT BODIES

Pluhatar T. A.

INTRODUCTION

Article 3 of the Constitution of Ukraine provides for that an individual, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the essence and course of activities of the State activities[1]. That is to say, according to the Basic Law, the main duty of our State is to affirm and ensure human rights and freedoms that cannot be implemented without an effective mechanism for their protection in case of violation. This is supported by the provisions of the National Human Rights Strategy, which states that ensuring the priority of human rights and freedoms is a determining factor in the State policy, decision-making by State authorities and local self-government bodies, furthermore, the State activities improvement in relation to the approval and enforcement of rights and human freedoms determines the creation of an effective mechanism for the protection of human rights and freedoms in Ukraine[2]. Law enforcement bodies play an important role in this mechanism. However, significant political and economic changes have taken place in the State since the adoption of the Constitution of Ukraine; accordingly, the system of law-enforcement bodies requires reforms to comply with modern socio-economic and political realities. According to the Strategy for Sustainable Development "Ukraine 2020," the reform of the law-enforcement system is a priority, whereas the objective of State policy in this area is to adjust the tasks and functions of law enforcement bodies, introduce new principles of service, new criteria for assessing the work of law-enforcers in order to increase the level of protection of human rights and freedoms, as well as the interests of society and the State from

[1] Konstytutsiia Ukrainy [The Constitution of Ukraine] (No. 254k/96-VR of 28 June 1996). Vidomosti Verkhovnoii Rady Ukrainy [Bulletin of the Verkhovna Rada of Ukraine], no.30, 1996. P. 141.

[2] On Approval of the National Human Rights Strategy of Ukraine (Decree of the President of Ukraine No 501/2015 of 25 August 2015). Офіційний вісник Президента України. 2015. № 20. Стор. 80. Ст. 1203.

unlawful infringements[3]. In addition, the current legislation that regulates the activities of law enforcement bodies needs to be improved, in particular, the terminology («law enforcement bodies», «law enforcement system», «law enforcement», etc.), currently used in legal regulations, should be defined clearly.

The issues of administrative and jurisdictional activity of law enforcement bodies have not been studied enough by legal scholars. Whereas in scientific works, some of its aspects have been covered by scholars, such as V. Averianov, O. Ahieiev, O. Anpilohov, O. Bandurka, Yu. Bytiak, I. Holosnichenko, Yu. Hroshevyi, S. Husarov, V. Daiev, Ye. Dodin, O. Dzhafarova, O. Ishchuk, D. Kalaianov, R. Kysil, S. Kivalov, A. Komziuk, T. Korniakova, O. Kuzmenko, V. Panov, O. Paseniuk, Yu. Pedko, V. Perepeliuk, M. Rudenko, O. Riabchenko, D. Saienko, A. Selivanov, V. Stefaniuk, V. Sukhonos, V. Tatsii, M. Tyshchenko, Yu. Shemchushenko, V. Shylnyk, M. Yakymchuk, O. Yarmysh and others, many issues of the topic under consideration are still episodic, incomplete and require further research. Therefore, a comprehensive theoretical and methodological approach to assessing the effectiveness of the administrative and jurisdictional activity of law enforcement bodies of Ukraine in modern conditions should be applied; the concept and content of this activity, its organizational and procedural principles should be determined, its features should be distinguished, as well as proposals on the improvement of certain provisions of the current legislation in this area should be formulated.

14.1. The concept and features of the administrative and jurisdictional activity of law enforcement bodies of Ukraine

In order to reveal the content of the administrative and jurisdictional activities of Ukrainian law enforcement bodies, the essence and specificities of concepts such as «jurisdiction», «administrative jurisdiction», «administrative and jurisdictional activity» should be established.

[3] Pro Stratehiiu staloho rozvytku "Ukrayina – 2020" Strategy for Sustainable Development "Ukraine 2020" (Decree of the President of Ukraine No 5/2015 of 12 January 2015). Ofitsiynyi visnyk Ukrainy [Official Bulletin of Ukraine], no. 4, 2015. P. 8. Art. 67.

The word «jurisdiction» [lat. *jurisdictio*, from 'jus' (juris) – law and 'dico' – proclaim] means the authority to give a legal assessment of the facts, to resolve legal issues[4].

The Great Explanatory dictionary of modern Ukrainian language explains this term as: 1) the right to hold court, consider and resolve legal issues, 2) the authority to give a legal assessment of the facts, to resolve legal issues, 3) the scope to which this right is applied[5].

In legal literature, jurisdiction is considered as court proceedings, cognisance, subject-matter jurisdiction[6]; the set of powers that enables the relevant State bodies to resolve legal disputes and offenses and apply legal sanctions[7]; the activities of the competent bodies authorized to consider legal cases (specific life cases in relation to which the law is applied) and to adopt legally binding decisions on them[8]; the range of powers of the court or administrative body for the legal assessment of specific facts, including the resolution of disputes and application of sanctions provided for by law[9]; the competence of judicial authorities to consider civil, criminal and other cases and matters in relation to the State or State agency's issues[10].

On the basis of existing theoretical developments study regarding the establishment of the essence and content of the term «jurisdiction,» H. Tymchenko argues that, first, jurisdiction is determined through law application activities; second, through the right (authority) to carry out such activities; third, through the body that carries out such activities. However, the author himself criticizes these approaches and emphasizes that jurisdiction should be determined through the activities of the

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[4] Slovnyk inshomovnykh sliv Melnychuka 'Slovopediia' [Melnichuk Dictionary of foreign language words "Wordspedia." Retrieved from http://slovopedia.org.ua/42/53422/293089.html. (in Ukrainian)

[5] Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy [Great explanatory dictionary of modern Ukrainian language]. V. T. Busel (Ed.). K., Irpin: PTF Perun, 2004. P. 1420. (in Ukrainian)

[6] Karinskii S. S. Yurisdiktsiia [Jurisdiction]. Slovar inostrannykh slov [Dictionary of Foreign Words] / S. S. Karinskii. I.V. Lekhin, S.M. Lokshina, F.N. Petrov (Eds.). Moscow: State publishing house of foreign and national dictionaries, 1954. P. 827. (in Russian)

[7] Pigolkin A. S. Yurisdiktsiia [Jurisdiction]. Yuridicheskii entsiklopedicheskii slovar [Legal Encyclopedic Dictionary] / A.Ya. Sukharev, M. M. Boguslavskii et al. (Eds.). (2nd ed., Ext.). Moscow: Sov. encyclop., 1987. P. 526. (in Russian)

[8] Alekseev S. S. Pravo: azbuka – teoriia – filosofiia: Opyt kompleksnogo issledovaniia [Law: Alphabet – Theory – Philosophy: Experience of complex research] / S. S. Alekseev. Moscow: Statute, 1999. P. 116. (in Russian)

[9] Borodiín Í. L. Admínístratyvno-yurysdyktsiinyi protses [Administrative and jurisdictional procedure] (Monography). Kyiv, 2007. P. 504. (in Ukrainian)

[10] Populiarna yurydychna entsyklopediia [Popular legal encyclopedia] / V. K. Hizhevskyi, V. V. Holovchenko, V. S. Kovalskyi et al. Kyiv: Yurinkom Inter, 2002. P. 525. (in Ukrainian)

competent authorities in resolving issues that arise in the application of law[11].

Obligatory conditions for the exercise of jurisdiction are the presence of an offense, the specific procedure rules of the case resolution, as well as the adoption of a jurisdictional act in the form and order established by law. The basis of the content of any jurisdictional activity is to collect, investigate and estimate the circumstances of an offense committed, as well as to adopt a decision on the case. Jurisdiction specificities are, namely: public authority specifics (jurisdictional protection of public relations is primarily the prerogative of competent State bodies), subjection to law (jurisdictional activity is always strictly regulated by law), law application and law enforcement (in carrying out jurisdictional activities no new provisions of law are established, but only the relevant applicable law enforcement provisions are used and applied)[12].

In the Code of Administrative Legal Proceedings of Ukraine and the Civil Procedure Code of Ukraine, the category «jurisdiction» is used to determine the scope of cases subject to courts, that is, as a synonym of subject-matter jurisdiction. At the same time, the provisions of Article 124 of the Constitution of Ukraine give reasons to argue that jurisdiction of courts extends to all legal relations that arise in the State, that is, it arises in connection with a dispute over law. Moreover, the concept of subject-matter jurisdiction is broader than the contiguous concept of cognisance, since subject-matter jurisdiction is the basis for the practical implementation of jurisdiction. In accordance with the current national legislation, law enforcement bodies are subjects of jurisdictional authority in cases that fall within their subject-matter jurisdiction.

Therefore, according to N. Petrenko, in the procedure law of Ukraine, in description and legal regulation of subject matter jurisdiction and cognisance of disputes, inappropriate use of the term «jurisdiction» should be emphasised because it has a broader semantic content and is used not only in relation to the activities of the court proceeding bodies, but also in relation to other State bodies. In the chapter titles and in the provisions of economic, civil and administrative procedure legislation, the term «subject-matter jurisdiction» should be used to define a range of cases to be

[11] Tymchenko H. P. Pryntsypy tsyvilnoi yurysdyktsii: Teoriia, istoriia, perspektyvy rozvytku (Monography). Kyiv: Publishing House 'Yurydychna dumka', 2006. Pp. 12–18. (in Ukrainian)

[12] Husarov S. M. Administratyvno-yurysdyktsiyna diialnist orhaniv vnutrishnikh sprav [Administrative and jurisdictional activities of the Internal Affairs bodies] (Dissertation of Doctor in Law in speciality 12.00.07). Institute of Legislation of the Verkhovna Rada of Ukraine. Kyiv, 2009. P. 20. (in Ukrainian)

considered by the courts of a particular court level, in its turn, “cognisance” should be used in relation to the rules for determining a specific court to consider the case. In addition, it is necessary to develop and legislatively establish a uniform for all procedure legal regulations definition of concepts such as “subject-matter jurisdiction of disputes,” “cognisance of disputes,” “jurisdiction”[13].

Therefore, jurisdiction cannot be related to court proceedings only, since it covers the powers of bodies carrying out law application and law enforcement aimed at implementing the provisions of the current legislation. For that reason, the jurisdiction should be considered as total organizational and procedural powers of State authorities, local authorities, judicial authorities and law enforcement bodies to protect the rights and interests of the participants in legal relations. The subject of jurisdiction is social relations that arise in connection with the resolution of a dispute over law.

It should be emphasized that in legal literature, jurisdiction is divided into subject matter, personal, territorial, time, full and limited, compulsory, basic and optional. According to branches of law, the jurisdiction is classified into constitutional, criminal, administrative, civil, economic. Meanwhile, in various branches of law, the concept of «jurisdiction» has its own genesis of theoretical research and practical application. Constant use of this category can be observed only in international and administrative law. In particular, this term is in international instruments such as the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, etc.

With regard to the definition of the concept of «administrative jurisdiction,» it is used both in a broader and narrower senses in the theory of administrative law. In particular, in a broad sense, «administrative jurisdiction» means any specific case resolution in case of a dispute over law, that is, conflict situations[14].

According to Yu. Rusnak, administrative jurisdiction is one of the main and effective means of protecting the rights of citizens; in addition,

[13] Petrenko N.O. Shchodo vykorystannia terminiv «pidvidomchist», «kompetentsiia», «yurysdyktsiia» ta «pidsudnist sporiv» u hospodarskomu protsesualnomu zakonodavstvi [On the use of the terms "subordination", "competence", "jurisdiction" and "jurisdiction of disputes" in economic procedural law]. Pidpryiemnytstvo, hospodarstvo i pravo [Entrepreneurship, economy and law], no. 5, 2012. P. 71. (in Ukrainian)

[14] Administratyvna diialnist orhaniv vnutrishnikh sprav. Zahalna chastyna : pidruchnyk [Administrative activity of the bodies of internal affairs. General part: Teaching manual] / I. P. Holosnichenko, Ya. Yu. Kondratiev (Eds.). Kyiv: Ukrainian Academy of Internal Affairs, 1995. P. 132. (in Ukrainian)

the jurisdictional activity of State bodies itself has different types. On the one hand, it is a dispute resolution over law during which the circumstances of the case are established, the legitimacy and validity of claims and objections of persons concerned are checked, and, on the other hand, it is the acts of the special bodies of punitive administrative jurisdiction. In a broad sense, in his opinion, administrative jurisdiction covers specific cases of the issues of rights, duties or legal interests of individuals and legal entities considered by the governing bodies, and for each legal dispute there should be the «judge» (institution) which can be referred to, and which can resolve independently the issue of the lawfulness or unlawfulness of the relevant requirement application of the appropriate legal regulation of the current legislation to the case circumstances in a particular case[15].

V. Bevzenko argues that administrative jurisdiction is an interdisciplinary legal institution (in particular, the institution of administrative and administrative procedure law), through which administrative courts identify (define) public legal disputes that are within their competence[16]. Moreover, administrative jurisdiction provides for considering both disputes that fall under competence of administrative courts according to the CALP of Ukraine and cases of administrative offenses, regardless of whether they are considered by the court of general jurisdiction or by a specially authorized executive body (the body of extrajudicial administrative jurisdiction). In addition, the consideration of disputes carried out by administrative courts is determined by administrative justice and correlates with administrative jurisdiction as part of the whole. In turn, the consideration of cases of administrative offenses is defined as judicial and extrajudicial administrative jurisdiction[17]. V. Stefaniuk argues that the administrative jurisdiction of State executive bodies does not substitute actions of the court even partially, but only

[15] Rusnak Yu. I. Administratyvno-yurysdyktsiina diialnist orhaniv derzhavnoi podatkovoi sluzhby Ukrainy [Administrative and jurisdictional activities of the State Tax Service of Ukraine] (Dissertation for the degree of Candidate of Juridical Sciences (Ph.D.) in speciality 12.00.07). National Academy of the State Taxes Service of Ukraine. Irpin, 2004. P. 19. (in Ukrainian)

[16] Bevzenko V. M. Administratyvna yurysdyktsiia: poniattia, sutnist, problemy vidmezhuvannia [Administrative jurisdiction: concept, essence, problems of delimitation]. Administratyvne pravo i protses [Administrative law and process], no. 2 (4), 2013. P. 193. (in Ukrainian)

[17] Kurylo V. Do poniattia administratyvnoi yurysdyktsii u silskomu hospodarstvi [On the notion of administrative jurisdiction in agriculture]. Visnyk Prokuratury [Bulletin of the Prosecutors Office], no. 7 (73), 2007. P. 117. (in Ukrainian)

precedes the trial. The decisions of these bodies do not affect the independence of the court[18].

According to Yu. Kozlov, administrative jurisdiction is, on the one hand, an administrative-procedural activity of authorized executive bodies, carried out in extrajudicial manner with the purpose of consideration and resolution of disputes that arise in implementation of executive power, legal assessment of its participants' behaviour and application of legal responsibility to the guilty party if necessary, and, on the other hand, the scientist interprets it as administrative and procedural activities, carried out in extrajudicial or judicial proceedings for the purpose of consideration and resolution of administrative-legal disputes and application of administrative punitive measures[19].

Furthermore, in legal literature, frequently administrative jurisdiction is reflected in a narrow sense as the consideration of cases of administrative offenses according to the administrative procedure, prescribed by law, by specially authorized bodies and their officials authorized to consider them and impose administrative penalties[20]. For example, O. Shergin[21] substantiates the interpretation of administrative jurisdiction as an activity of an authorized body, an official regarding the consideration of cases of administrative offenses and the application of administrative liability measures, that is, administrative penalties. Some authors propose to understand administrative jurisdiction as the activity of an authorized State body, an official regarding the resolution of individual administrative cases (disputes) related to administrative-legal relations of a citizen or a non-governmental organization with a public authority (its official) in the exercise of public authorities by this body, as a rule, executive authority[22]. From the perspective of A. Horoshko, administrative jurisdiction is the activity of State authorities and local self-government bodies regarding decision-making aimed at realization of the statutory competence, which is State power by nature, for protecting the rights and freedoms of citizens, lawful interests of legal entities, as well as

[18] Stefaniuk V. S. Pravova obumovlenist zaprovadzhennia administratyvnoi yustytsii v Ukraini [The legal conditionality of the introduction of administrative justice in Ukraine] (Dissertation Abstract of Candidate of Juridical Sciences (Ph.D.) in speciality 12.00.07), Taras Shevchenko Kyiv National University. Kyiv, 2000. Pp. 7–8. (in Ukrainian)

[19] Administrativnoe parvo: uchebnyk [Administrative law: Teaching manual] / Yu. M. Kozlov and L. L. Popov (Eds.). Moscow, 2001. P. 413. (in Russian)

[20] Ishchuk O. S. Poniattia administratyvnoi yurysdyktsii: problemy definitsii [Concept of administrative jurisdiction: Problems of definition]. Forum prava [Law Forum], no. 1, 2011. P. 424. Retrieved from http://www.nbuv.gov.ua/e-journals/FP/2011-1/11iocjpd.pdf. (in Ukrainian)

[21] Shergin A.P. Admynystratyvnaia yurysdyktsyia [Administrative jurisdiction] (Monography). Moscow: Legal Lit., 1979. P. 9. (in Russian)

[22] Slovar administrativnogo prava [Dictionary of Administrative Law] / I. L. Bachilo, T. M. Gandilov, A. A. Grishkov et al. (Eds.). Moscow: Legal Culture Foundation, 1999. P. 10. (in Russian)

public interests in protecting public order, public safety[23]. In turn, O. Mykolenko and V. Berdnyk define the concept of "administrative jurisdiction" as the competence of the State authority or local self-government body (their officials), provided for by administrative legal regulations, to consider administrative cases and to adopt legally binding decisions on them. This definition enables to argue that three types of administrative jurisdiction exist, and each has its specificities: a) administrative and regulatory jurisdiction, that is, the competence of administrative case resolution that arise on other grounds, except for a dispute over law and an administrative offense (cases of licenses, State registration of legal entities, etc.); b) administrative and legal proceedings jurisdiction, that is, the competence of administrative courts to pass judgements on relevant cases; c) administrative tort jurisdiction, that is, the competence to pass judgements on cases of administrative offenses that entail imposition of administrative penalties. Due to connection with legal conflicts (legal collisions) resolution, the scientists unite the last two types of administrative jurisdiction into one group, that is, administrative conflict jurisdiction[24].

Therefore, most scientists include in administrative jurisdiction activities of legal case resolution, legal protection of violated or disputed interests, legally powerful decision regarding the application of the corresponding legal sanction, restoration of law violated[25], since from their perspective, administrative jurisdiction is consideration of administrative legal disputes, cases of administrative offenses according to the administrative procedure, established by law, by the bodies (officials) specifically authorized to consider disputes and impose administrative penalties[26].

According to the academic course "Administrative Law of Ukraine," the presence of an administrative dispute is a determining criterion for clarifying the content of administrative jurisdiction implemented in public administration or in local self-government by the relevant public authorities (including administrative courts). The stage of collision between parties' legal

[23] Horoshko A. A. Orhany derzhavnoi podatkovoi sluzhby Ukrainy yak subiekty administratyvnoi yurysdyktsii [Bodies of the State Tax Service of Ukraine as subjects of administrative jurisdiction] (Dissertation of Candidate of Juridical Sciences (Ph.D.) in speciality 12.00.07), National Aviation University. Kyiv, 2013. P. 29. (in Ukrainian)

[24] Administratyvno-pravove rehuliuvannia yurysdyktsiinoi diialnosti administratyvnykh komisii v Ukraini [Administrative and legal regulation of the jurisdictional activities of administrative commissions in Ukraine] (Monography) / O.I. Mykolenko, V.S. Berdnyk. Odesa: Feniks, 2013. Pp. 16–17. (in Ukrainian)

[25] Administratyvne pravo Ukrainy. Akademichnyi kurs [Administrative Law of Ukraine. Academic course] (Teaching manual in 2 Vols., Vol. 1: General part) / V. B. Averianov (Ed.). Kyiv: Yuryd. dumka, 2007. P. 506. (in Ukrainian)

[26] Administratyvne pravo Ukrainy: pidruchnyk dlia stud. yuryd. spets. vyshchykh navch. zakl. [Administrative law of Ukraine: Teaching manual for the students of special Law HEI] / Bytiak Yu.P., Bohutskyi V. V., Harashchuk V. M., et al. (Eds.). Kharkiv: Pravo, 2001. P. 196. (in Ukrainian)

positions under consideration is only the beginning of a conflict situation. It is accomplished with the awareness of a citizen that his/her rights are violated or obstacles are created for their implementation, in contrast, the persistent reluctance of the public authority to recognize the citizen's requirements or misunderstanding of unlawfulness of administrative actions or inactivity. Therefore, administrative jurisdiction can be considered from two perspectives: «punitive» administrative jurisdiction, that is, the activity of public authorities regarding the consideration and resolution of an administrative legal dispute, based on the presence in the actions of citizens and legal entities of administrative (or disciplinary) misdemeanour elements and imposition of the relevant penalty; «human rights» administrative jurisdiction, that is, the activity of public authorities (including administrative courts) in connection with the resolution of an administrative legal dispute, the content of which is the requirement of an individual or legal entity to restore rights violated with regard to unlawfulness of actions or inactivity of the relevant public authorities[27].

Therefore, the analysis of different scientific perspectives regarding the essence and the content of the concept of «administrative jurisdiction» enables to conclude that now no uniform definition of the concept exists, moreover, it is considered both in broader and narrower senses. In particular, in a broad sense, administrative jurisdiction involves the total set of social relations that arise between state authorities and citizens or their associations regarding various issues in their activities. That is, administrative jurisdiction is connected not only with issues that require legal regulation and dispute resolution on its merits, but also problems arising in the course of their direct activities in interaction with citizens[28]. In a narrow sense, administrative jurisdiction is defined as consideration of administrative legal disputes, cases of administrative offenses according to the administrative procedure, established by law, by the bodies (officials) specifically authorized to consider disputes and impose administrative penalties

Therefore, this work advocates the perspective of those scholars who interpret administrative jurisdiction as procedure activities of the subjects of administrative jurisdiction, carried out in the established (judicial or

[27] Administratyvne pravo Ukrainy. Akademichnyi kurs [Administrative Law of Ukraine. Academic course] (Teaching manual in 2 Vols. Vol. 1: General part) / V. B. Averianov et al. (Eds.). Kyiv: Yuryd. dumka, 2009. P. 492–493. (in Ukrainian)

[28]Burbyka M. M. Administratyvno-yurysdyktsiyna diialnist sudu u spravakh pro porushennia mytnykh pravyl [Administrative and jurisdictional activities of the court in cases of violation of customs rules] (Monography) / M.M. Burbyka, O.M. Rieznik, O.I. Chernobai. Sumy: Sumy State University, 2016. P. 11. (in Ukrainian)

extrajudicial) manner for the purpose of consideration, legal assessment of the behaviour (actions) of the parties and resolution of disputes over law or cases on administrative offenses.

In addition, V. Averianov argues reasonably that the content of «administrative jurisdiction» institution requires to be consolidated legally in the relevant regulatory act, accordingly, to unify jurisdiction of: a) the executive authorities, empowered to consider complaints of citizens and legal entities for illegally taken decisions of both lower bodies and subordinates, that is, the scope of administrative appeals (administrative «quasi-justice»); b) the executive authorities, empowered to apply measures of administrative responsibility (administrative extrajudicial justice); c) administrative courts (administrative justice)[29]. Therefore, nowadays, the legal consolidation of the content of "administrative jurisdiction," as well as the concept of administrative and jurisdictional activity, is crucial, moreover, for the sake of convenience, it would be better to reveal the procedure for exercising the jurisdiction of different bodies in a uniform legal regulation.

It should be noted that at present the legal literature does not consider the concept and specificities of administrative and jurisdictional activity from a uniform perspective, furthermore, the majority of scholars do not distinguish between administrative jurisdiction and administrative and jurisdictional activity.

Some scholars define administrative and jurisdictional activities as respective entities' activities regulated by the administrative and legal regulations in relation to consideration and resolution of administrative offense cases and imposition of administrative penalties[30]. According to S. Shoptenko, primarily, administrative and jurisdictional activities include consideration and resolution of administrative offense cases, as well as other administrative and jurisdictional actions by subjects within the powers granted to them by the current legislation. The researcher claims that these actions include any activity related to the occurrence of a particular legal dispute[31]. S. Komissarov argues that administrative and

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[29] Averianov V. B. Pytannia administratyvnoi reformy u zmisti Zahalnoi kontseptsii derzhavno-pravovoi reformy [Issues of administrative reform in the content of the general concept of state and legal reform]. State-Legal Reform in Ukraine: Proceedings from International Scientific and Practical Conference. Kyiv: UAUP, 1997. Pp. 193–195. (in Ukrainian)

[30] Anokhina L. S. Subiekty administratyvnoi yurysdyktsii v Ukraini [Subjects of administrative jurisdiction in Ukraine] (Dissertation of Candidate of Juridical Sciences (Ph.D.) in speciality 12.00.07). National University of Internal Affairs of the Ministry of Internal Affairs of Ukraine, Kharkiv, 2001. Pp. 37–38. (in Ukrainian)

[31] Shoptenko S. S. Shchodo zmistu administratyvno-yurysdyktsiynoi diialnosti pravookhoronnykh orhaniv [On the content of administrative and jurisdictional activity of law enforcement bodies]. Yurydychnyi naukovyi elektronnyi zhurnal [Legal Scientific Electronic Journal], no. 4, 2014. Pp. 167–170. (in Ukrainian)

jurisdictional activity is the statutory activity of State authorities and local self-government bodies, their officials and public servants, authorized to conduct proceedings in cases of administrative offenses, execution of decisions on imposition of administrative penalties, as well as application of measures of administrative prevention and restraint of such offenses with the purpose of protecting the rights and freedoms of citizens, property, the constitutional system of Ukraine, the rights and legitimate interests of enterprises, institutions and organizations, law and order established, strengthening of law, prevention of offenses, education of citizens for accurate and strict compliance with the Constitution and the laws of Ukraine, respect for human rights, honour and dignity, for the rules of cohabitation, diligent performance of duties, responsibility to society[32].

Furthermore, with regards to the essence of the administrative and jurisdictional activity of the Public Security Police, S. Alforov, T. Minka and R. Mironiuk state that it is the result of practical implementation of a certain part of powers that together with the subjects of jurisdiction constitute competence of the relevant executive authorities, and suggest that the Public Security Police's administrative and jurisdictional activities should be viewed from narrow and broad perspectives. In particular, in a narrow sense, this is activity, regulated mainly by the provisions of administrative law, of the relevant units (officials) competent to consider, to resolve administrative offense cases, and to impose administrative penalties on persons who have committed this offense. In a broad sense, the administrative and jurisdictional activity of the Public Security Police is the activities, regulated mainly by the provisions of administrative law, of the relevant units (officials) on the consideration and resolution of individual conflictual administrative cases, namely cases of administrative offenses, disciplinary cases and cases on complaints of citizens, as well as related administrative procedure measures[33].

Therefore, the analysis of different scientific approaches the concept of «administrative and jurisdictional activity» reveals that most scientists disclose the content of this concept through the categories such as «the system of legal relations», «a set of procedure actions», «the exercise of a

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[32] Komissarov S. Sutnist administratyvno-yurysdyktsiynoi diialnosti [The essence of administrative and jurisdictional activity]. Naukovyi chasopys Natsionalnoi akad. prokuratury Ukrainy [Scientific Journal of National Academy of Prosecutors Office of Ukraine], no. 3, 2015. Pp. 100–107. Retrieved from http://www.chasopysnapu.gp.gov.ua/chasopys/ua/ pdf/7-2015/komisarov.pdf. (in Ukrainian)

[33] Administratyvno-yurysdyktsiina diialnist militsii hromadskoi bezpeky: navch. posib [Administrative and Jurisdictional Activities of the Public Security Police: Teaching manual] / S.M. Alforov, T.P. Minka, R.V. Myroniuk (Eds.). Kharkiv: Pravo, 2014. 304 p. (in Ukrainian)

competent subject's powers», «implementation of legal regulations that provide for the rights and obligations of a particular subject for consideration and resolution of legal conflicts». L. Ivanova argues that currently the content of the concepts of administrative and jurisdictional activity, administrative jurisdiction, administrative and jurisdictional procedure, administrative and jurisdictional proceedings, administrative justice and even law enforcement activities are confused frequently. Therefore, it is necessary to identify the specificities of this activity, characterizing it as administrative and jurisdictional, distinguishing from a series of externally similar (State management, jurisdictional, procedure and others) types of activities[34].

According to most scientists, the specificities of administrative and jurisdictional activity are: 1) a large scope of social relations, protected in an administrative and jurisdictional manner; 2) significant amount of rights regarding imposition of administrative penalties, in comparison with other subjects of jurisdiction; 3) a wide range of officials empowered to apply administrative legal sanctions; 4) the specialization specified in legal regulations concerning the consideration of administrative and jurisdictional cases; 5) the right to impose administrative penalties at the scene of the offense[35].

I. Probko argues that administrative and jurisdictional activity specificities are its public authority specifics (jurisdictional protection of public relations is primarily the prerogative of competent State bodies), subjection to law (it is always strictly regulated by law), law application and law enforcement (in its implementation no new provisions of law are established, but only the relevant applicable law enforcement-directed provisions are used and applied)[36].

The analysis of administrative and jurisdictional activity enables O. Jafarova plausibly distinguishes the specificities of this activity, such as: 1) implementation by specially authorized officials of the relevant bodies;

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[34] Ivanova L. Yu. Formy administratyvno-yurysdyktsiynoi diialnosti orhaniv vnutrishnikh sprav Ukrainy [Forms of administrative and jurisdictional activity of the internal affairs bodies of Ukraine] (Dissertation of Candidate of Juridical Sciences (Ph.D.) in speciality 12.00.07) Kharkiv National University of Internal Affairs. Kharkiv, 2001. 206 p. (in Ukrainian)

[35] Kalaianov D. P. Administrativno-yurisdiktsionnaia deiatelnost orhanov vnutrennikh del Ukrainy : ucheb. posob. [Administrative-jurisdictional activity of the bodies of internal affairs of Ukraine: Teaching manual] / D. P. Kalaianov. Odessa, 2000. 187 p. (in Russian)

[36] Probko I. B. Administratyvno-yurysdyktsiina diialnist orhaniv vykonavchoi vlady [Administrative and jurisdictional activities of executive bodies]. Visnyk Dnipropetrovskoho un-tu imeni Alfreda Nobelia. Seriia 'Yurydychni nauky' [Bulletin of Alfred Nobel Dnipropetrovsk University. Series "Legal Sciences"], no. 1 (4), 2013. Pp. 23–27. (in Ukrainian)

2) an objective to ensure human and civil rights and freedoms, to protect public order and safety, the established order of governance; 3) an obligatory presence of a legal dispute; 4) appropriate procedure regulation; 5) mandatory passing of a decision in the form of a legal act; 6) in the system of law enforcement bodies, not all services and their officials have jurisdictional powers; 7) an official of the law-enforcement body considers each administrative case individually; 8) consideration of individual administrative cases is carried out according to the relevant legal regulations, which provide for the procedure for consideration of complaints on unlawful actions or inactivity of law enforcement bodies and their officials that violate the rights and legitimate interests of citizens[37].

Therefore, the perspective of O. Selivanov, who takes into account the universal understanding of «jurisdiction» and claims that it is a set of powers, established by law (or other legal regulation), of the relevant State bodies, executive bodies and government bodies that determine the legal personality (functions, competence, issues of jurisdiction) regarding the application of their punitive powers in resolving issues (disputes, conflicts, the provision of administrative services, etc.), as well as in resolving disputes in court in compliance with proceeding regulations and administrative procedures[38], enables to formulate the definition of the concept «administrative and jurisdictional activity of law enforcement bodies of Ukraine,» which is the activity of law enforcement bodies (officials), regulated by the provisions of administrative and administrative procedure law, regarding the consideration and resolution of legal disputes, offenses, establishment of facts, providing a legal assessment of the behaviour of parties to a conflict situation, making a decision within the limits of a statutory competence, which is State power by nature and is aimed at protecting rights, freedoms of citizens, legitimate interests of society and the State.

The features of the administrative and jurisdictional activity of law enforcement bodies of Ukraine are: 1) its dependence on tasks, functions and nature of the activity of each law enforcement body related to the

[37] Dzhafarova O. V. Do pytannia pro vyznachennia sutnosti administratyvno-yurysdyktsiynoi diialnosti pravookhoronnykh orhaniv Ukrainy [On the issue of determining the essence of administrative and jurisdictional activity of law enforcement bodies of Ukraine]. Visnyk Kharkivskoho natsionalnoho un-tu vnutr. sprav[Bulletin of Kharkiv National University of Internal Affairs], no. 44, 2009. Pp. 152-157. (in Ukrainian)

[38] Selivanov A. O. Doktryna administratyvnoi yurysdyktsii v teorii ta praktytsi realizatsii vladnykh povnovazhen [Doctrine of administrative jurisdiction in the theory and practice of realization of power] (Chapter 2.9). In Pravova doktryna Ukrainy [The legal doctrine of Ukraine]. In 5 Vols. / V. Ya. Tatsii (Ed.). National Academy of Legal Sciences of Ukraine. Kharkiv: Pravo, 2013. Pp. 348–360. (in Ukrainian)

consideration and resolution of a dispute over law arising from provisions of administrative law, or the possibility of applying administrative coercive measures to the subject of administrative law; 2) the content of this activity is legal assessment of the totality of facts, the behaviour of the parties to a conflict situation, enabling to take a corresponding decision, which may contain legal sanctions etc.; 3) it is human-rights, law-enforcement, and preventive; 4) it is carried out in a form and procedure strictly regulated by law; 5) the official procedure for these activities implementation by specially authorized officials of law enforcement bodies; 6) it is aimed at protecting the rights and freedoms of citizens, the legitimate interests of society and the State.

14.2. Functions and principles of the administrative and jurisdictional activity of law enforcement bodies of Ukraine

To form a comprehensive view of the administrative and jurisdictional activity of the law enforcement bodies of Ukraine, it is logical and appropriate to determine the functions and principles of such activities.

Primarily, it should be noted that the word «function» comes from the Latin *functio* («implementation, execution») and means the role that a particular social institution performs in relation to the needs of the social system, the dependence, which is traced between different social processes[39].

According to the explanatory dictionary of the modern Ukrainian language, the term «function» means: 1) a phenomenon which depends on another phenomenon, a form of its discovery that changes in accordance with its changes; 2) the work of someone, something; duty; the scope of activity of someone, something; 3) the appointment, role of something[40].

In scientific literature, the term «function» is used frequently to name and/or characterise area of activity, to characterise in general the essence of the tasks and goals of the activity of someone or the purpose of something.[41].

[39] Filosofskii entsyklopedycheskii slovar [Philosophical Encyclopedic Dictionary] / L. F. Ilychev, P. N. Fedoseev, S. M. Kovalev, V. H. Panov (Eds.). Moscow: Sov. Encycl., 1983. P. 751. (in Russian)

[40] Velykyi tlumachnyi slovnyk suchasnoi ukrainskoi movy [Great explanatory dictionary of modern Ukrainian language]. / V. T. Busel (Ed.). K., Irpin: PTF Perun, 2004. P. 1335. (in Ukrainian)

[41] Derzhavne upravlinnia : problemy administratyvno-pravovoi teorii ta praktyky [Public administration: Problems of administrative-legal theory and practice] / V. B. Averianov, O. F. Andriiko, Yu. P. Bytiak et al. (Eds.). Kyiv: Fakt, 2003. P. 101. (in Ukrainian)

Administrative and jurisdictional activity functions are specific, have a special content and can be carried out both independently and interrelated, integrating with each other. In other words, in the course of administrative and jurisdictional activity, all functions should be merged into a uniform, holistic process and reflect the main stages of this activity.

The main characteristics of the functions of the administrative and jurisdictional activity of law enforcement bodies are: homogeneity of the content of actions within a single function; their target orientation; a separate set of tasks accomplished. It means that the functions as the main interrelated areas of administrative and jurisdictional activity are implemented both by the law enforcement body as a whole and by its officials and represent relatively independent and homogeneous areas of administrative and jurisdictional activity, carried out by them in accordance with tasks provided and powers granted to them, and are aimed at protecting the rights and freedoms of citizens, the interests of society and the State.

Moreover, the concept of administrative and jurisdictional activity should be distinguished from its forms and methods. This is because methods are ways and means of this activity, and forms are external expression of individual actions, carried out by law enforcement bodies (officials) in order to implement tasks assigned to them.

The functions of law enforcement bodies and the functions of the administrative and jurisdictional activity of these bodies are not identical, since the functions of law enforcement bodies are manifested and implemented in the daily activities of each particular body in general, of its separate units (officials) during their tasks execution. The main functions of law enforcement bodies are preventive, protective, resocialization function, operative-detective, the function of crime investigation, consideration and decision on applications and reports on crimes and events, consideration of cases of administrative offenses, execution of sentences, decisions, rulings and decisions of courts, decisions of prosecutors, intelligence, as well as control, permissive, analytical, informational, regulatory, coordinating, etc.

For example, the functions of the prosecutor's office defined in Article 2 of the Law of Ukraine «On Prosecutor's Office,» are not identical with the functions of the administrative and jurisdictional activity of these bodies, in particular, in accordance with the article of this Law, the

following functions are assigned to the prosecutor's office: 1) providing State accusation in court; 2) representing the interests of a citizen or the State in court; 3) supervision over compliance with laws by the bodies conducting operative-detective activities, inquiry, pre-trial investigation; 4) supervision over compliance with laws during the execution of judicial decisions on criminal cases, as well as in the application of other coercive measures related to the restriction of personal freedom of citizens[42], while jurisdiction as a form of legal activity performs primarily protective, educational and, in part, regulatory functions.

According to S. Husarov, administrative-jurisdictional activity has the following functions: protective, educational, regulatory and preventive[43], therefore, they reflect fully and comprehensively the essence and content of the administrative and jurisdictional activity of law enforcement bodies. For example, the protective function of the administrative and jurisdictional activity of law enforcement bodies is implemented in the course of resolutions of offense cases, legal sanctions application, and the restoration of the infringed or disputed rights of citizens, officials, enterprises and the State. It is determined by the tasks of the Law of Ukraine on Administrative Offenses. In particular, Article 1 of the CAO of Ukraine states that the task of the CAO of Ukraine is the protection of the rights and freedoms of citizens, property, the constitutional system of Ukraine, the rights and legitimate interests of enterprises, institutions and organizations, law and order established, strengthening of the rule of law, preventing offenses, education of citizens for accurate and strict compliance with the Constitution and the laws of Ukraine, respect for the rights, honour and dignity of other citizens, for the rules of cohabitation, diligent performance of their duties, responsibility to society[44].

In turn, the educational function of the administrative and jurisdictional activity of law enforcement bodies is to apply measures aimed at communicating a proper appreciation of law to persons who have committed a violation of law. According to Article 1 of the CAO of Ukraine, it provides education of citizens for accurate and strict

[42] Pro prokuraturu [On the Prosecutors Office] (Law of Ukraine no. 1697-VII of October 14, 2014). Holos Ukrainy [Voice of Ukraine], no. 206, 25 October 2014. (in Ukrainian)

[43] Husarov S. M. Administratyvno-yurysdyktsiyna diialnist orhaniv vnutrishnikh sprav [Administrative and jurisdictional activities of the Internal Affairs bodies] (Dissertation of Doctor in Law in speciality 12.00.07). Institute of Legislation of the Verkhovna Rada of Ukraine. Kyiv, 2009. P. 462. (in Ukrainian)

[44] Kodeks Ukrainy pro administratyvni pravoporushennia [Code of Ukraine on Administrative Offenses] (Amended, no. 8073-X of December 07, 1984). Retrieved from http://zakon3.rada.gov.ua/laws/show/80731-10. (in Ukrainian)

compliance with the Constitution and the laws of Ukraine, respect for the rights, honour and dignity of other citizens, for the rules of cohabitation, diligent performance of their duties, responsibility to society.

I. Horodetska argues that correctness and concise organization of the jurisdictional procedure determine the conformity of the decision with the legal provision and the validity of the jurisdictional act, which affects significantly emotional elements of legal psychology. The entire proceeding in a case is subordinated to the formation of moral guidelines in society due to openness, publicity of the procedure and adoption of individual rulings on eliminating causes that contributed to offense commission[45].

The regulatory function of the administrative and jurisdictional activity of law enforcement bodies is derived from the corresponding function of law. This function is implemented in transformation of regulatory provisions into the actions of subjects of law, into legal relations. Since, to a certain extent, regulation means management, then the regulatory function reflects the managerial aspect of jurisdictional proceedings. Management by means of legal provisions is the managerial system with a corrective element, if the primary signal (provision) does not work, the corrective signal (the act of jurisdiction) is activated, which forces the subject under management to fulfil duties)[46]. In this way, the rule of law is ensured and violations of legal provisions are eliminated. This function is ensured due to its assistance in assessing the compliance of the behaviour of certain legal entities with the requirements of legal provisions by law enforcement bodies and, in necessary cases, carry out a corrective action in the form of warning, administrative fine imposition, etc. if necessary. In such cases, the administrative and jurisdictional activity is related to compulsory enforcement, when the parties to legal relations are given corresponding rights and obligations on grounds of an official law-enforcement managerial act, which is an integral part of this activity.

Article 6 of the CAO of Ukraine provides for the preventive function of the administrative and jurisdictional activity of law enforcement bodies in connection with measures aimed at preventing administrative offenses,

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[45] Horodetska I. A. Pidstavy ta zmist administratyvno-yurysdyktsiynoi diyalnosti derzhavnoho inspektora z kontroliu za vykorystanniam ta okhoronoiu zemel [Grounds and the content of the administrative and jurisdictional activity of a State inspector for control over the use and protection of lands]. Universytetski naukovi zapysky [University Scientific Notes], no. 2 (30), 2009. Pp. 190–195. (in Ukrainian)

[46] Kurylo V. I. Administratyvna yurysdyktsiia v APK Ukrainy: navch. posib. dlia stud. vyshch. navch. zakl. [Administrative jurisdiction in the AIC of Ukraine: Teaching manual for the students of higher educational institutions] / V. I. Kurylo, V. K. Shkarupa, O. Yu. Piddubnyi (Eds.). Kyiv: Master – XXI centuries, 2008. 688 p. (in Ukrainian)

identifying and eliminating the causes and conditions conducive to their commission, the education of citizens for high consciousness and discipline, strict adherence to the laws of Ukraine. This function implementation is one of the main tasks of proceedings in cases on administrative offenses, since the application of the imposed administrative penalty is related to achieving the objectives of general and individual prevention of administrative offenses. In addition, Article 23 of the CAO of Ukraine provides for application of the administrative penalty with the purpose of education of a person, who has committed an offense, for compliance with the laws of Ukraine, respect for the rules of cohabitation, diligent performance of their duties, responsibility to society, as well as preventing new offenses commission both by the perpetrator and by other persons[47].

Moreover, the preventive function of the administrative and jurisdictional activity should be implemented not only by choosing the type and amount of administrative penalty in accordance with the principles of legality and individualization, but also by the entire consideration of the case. According to S. Husarov, it is imperative to explain to the perpetrator the legal consequences of his/her misconduct. This is especially important in cases of administrative offenses because their commission borders on a criminal offense. Unfortunately, bodies of administrative jurisdiction do not always use such an opportunity to prevent offenses[48].

It should be emphasized that any activity requires moral foundations, in particular on the principles, norms and values of society. Accordingly, the administrative and jurisdictional activity of law enforcement bodies should also be guided by social standards and principles.

Considering the general concept of «principle,» which means the initial guiding idea, the basic starting point, as well as the general concept of the principles of law, V. Shylnyk argues that the principles of the administrative and jurisdictional activity are fundamental ideas, enshrined in the Constitution of Ukraine and the current administrative legislation, which determine the essence, organization and area of the specified activity, its goals, tasks, functions, methods and forms of implementation,

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[47] Kodeks Ukrainy pro administratyvni pravoporushennia [Code of Ukraine on Administrative Offenses] (Amended, no. 8073-X of December 07, 1984). Retrieved from http://zakon3.rada.gov.ua/laws/show/80731-10.

[48] Husarov S. M. Administratyvno-yurysdyktsiyna diialnist orhaniv vnutrishnikh sprav [Administrative and jurisdictional activities of the Internal Affairs bodies] (Dissertation of Doctor in Law in speciality 12.00.07). Institute of Legislation of the Verkhovna Rada of Ukraine. Kyiv, 2009. P. 462. (in Ukrainian)

as well as the procedural status of the subjects of this activity[49]. K. Serhiienko's definition is similar as she argues that the principles of the administrative and jurisdictional activity are the basic ideas, enshrined in the Basic Law of the State, the Constitution, and in the current administrative legislation, aimed at determining the essence and area of this type of activity, its tasks and functions, methods and forms of implementation, as well as the procedural status of the subjects of the administrative and jurisdictional activity[50]. Therefore, in the most general manner, they define the framework of proper, reasonably required and legal conduct in law, that is, outlines limits of rights, duties and responsibilities. In this sense, the principles are a legal «bridgehead» for legal guarantees to act[51].

Therefore, the principles of the administrative and jurisdictional activity of law enforcement bodies determine its essence and nature, reflect the leading ideas of the administrative law and procedure, and constitute the general foundations of legal regulation of the activities of law enforcement bodies as subjects of the administrative and jurisdictional activity for protection and defence of the rights and freedoms of citizens, the interests of society and the State. They are extremely important, since they summarize the basic trends, reveal the genesis of legal norms and standards.

Therefore, the principles of the administrative and jurisdictional activity of law enforcement bodies are the fundamental principles of the activity of law enforcement bodies for the consideration and resolution of relevant cases on violation of the rights, freedoms or legitimate interests of citizens or the State that arise in the course of their State power activities. In practice, the principles are legally fixed in the form of legal provisions, which are the general statements that constitute the basis for the administrative-jurisdictional activity of law enforcement bodies. For that reason, they become important legal requirements mandatory for execution and compliance with by all law enforcement agencies.

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[49] Shylnyk V. Yu. Administratyvni yurysdyktsiyni provadzhennia ta yikh zdiisnennia orhanamy vnutrishnikh sprav [Administrative jurisdictional proceedings and their implementation by internal affairs bodies] (Dissertation of Candidate of Juridical Sciences (Ph.D.) in speciality 12.00.07), National University of Internal Affairs. Kharkiv, 2004. 196 p. (in Ukrainian)

[50] Serhiienko K. A. Pryntsypy administratyvno-yurysdyktsiynoi diialnosti orhaniv vykonavchoi vlady [Principles of administrative and jurisdictional activity of executive authorities] (Dissertation of Candidate of Juridical Sciences (Ph.D.) in speciality 12.00.07), Classic Private University. Zaporizhzhia, 2011. 197 p. (in Ukrainian)

[51] Opryshko V. F. Konstytutsiini osnovy rozvytku zakonodavstva [Constitutional basis of legislation development] (Scientific Issue). Kyiv: Institute of Legislation of the Verkhovna Rada of Ukraine, 2001. 212 p. (in Ukrainian)

An analysis of the principles of the administrative and jurisdictional activity of law enforcement bodies reveals that this activity is based on general principles that are specific to any executive and regulatory activity of public authorities and on the special principles that determine the underlying foundations precisely for the administrative and jurisdictional activity of law enforcement bodies. The general principles include: the rule of law; legality; ensuring the compliance with human and civil rights and freedoms; humanism; democracy; publicity; openness and transparency; the equality of the parties before law; presumption of innocence; responsibility. The special principles of the administrative and jurisdictional activity of law enforcement bodies include: comprehensive and complete consideration of the case; timeliness; confidentiality; efficiency; objective truth; autonomy and independence in decision-making; provision of the right to protection; consideration of the case within a reasonable time.

These principles are enshrined in numerous legal regulations of a various legal effect, which in the end does not allow ensuring at the proper level the observance of the rights and freedoms of citizens during the implementation of the administrative and jurisdictional activity by law enforcement bodies. Therefore, this should be fixed in one legal regulation, in particular in the Administrative Procedure Code of Ukraine.

CONCLUSIONS

The administrative and jurisdictional activity of law enforcement bodies of Ukraine is the activity of law enforcement bodies (officials), regulated by the provisions of administrative and administrative procedure law, regarding the consideration and resolution of legal disputes, offenses, establishment of facts, providing a legal assessment of the behaviour of parties to a conflict situation, making a decision within the limits of a statutory competence, which is State power by nature and is aimed at protecting rights, freedoms of citizens, legitimate interests of society and the State.

The features of the administrative and jurisdictional activity of law enforcement bodies of Ukraine are: 1) dependence on tasks, functions and nature of the activity of each law enforcement body related to the consideration and resolution of a dispute over law arising from provisions of administrative law, or the possibility of applying administrative coercive

measures to the subject of administrative law; 2) the content of this activity is legal assessment of the totality of facts, the behaviour of the parties to a conflict situation, on the basis of which a corresponding decision, which may contain legal sanctions, is taken, etc.; 3) it is human-rights, law-enforcement, and preventive; 4) it is carried out in a form and procedure strictly regulated by law; 5) the official procedure for these activities implementation by specially authorized officials of law enforcement bodies; 6) it is aimed at protecting the rights and freedoms of citizens, the legitimate interests of society and the State.

As the subject of the administrative and jurisdictional activity, a law enforcement body is a State body, created to maintain law and order in the State and authorized to protect, defend and restore the rights and freedoms of citizens, as well as interests of society and the State through fair, impartial, timely consideration and resolution of administrative offense cases or legal disputes and taking decisions, which may contain legal sanctions.

The functions of the administrative and jurisdictional activity of law enforcement bodies are specific, relatively independent, qualitatively homogeneous components of the administrative and jurisdictional activity that are characterized by a target orientation for achieving the objectives and tasks of law enforcement bodies in the course of administrative and jurisdictional proceedings implementation.

The principles of the administrative and jurisdictional activity of law enforcement bodies determine its essence and nature, reflect the leading ideas of the administrative law and procedure, and constitute the general foundations of legal regulation of the activities of law enforcement bodies as subjects of the administrative and jurisdictional activity regarding consideration and resolution of cases within their competence for protection and defence of the rights and freedoms of citizens, the interests of society and the State. In practice, the principles are legally enshrined in the form of legal provisions, which are the general statements that constitute the basis for the administrative-jurisdictional activity of law enforcement bodies. They are extremely important, since they summarize the basic trends, reveal the genesis of legal norms and standards, ensure finding out and comprehensive investigation of the circumstances of the case and testify to the legality of decisions taken by the law-enforcement body as the subject of administrative and jurisdictional activity, provide

implementation of mandatory legitimacy and fairness in law application activities.

SUMMARY

The issues of the administrative and jurisdictional activity of law enforcement bodies have not been studied enough by legal scholars. Whereas in their studies, Ukrainian scholars have covered some of its aspects, many issues of the topic under consideration are still episodic, incomplete and require further research. Therefore, a comprehensive theoretical and methodological approach to assessing the effectiveness of the administrative and jurisdictional activity of law enforcement bodies of Ukraine in modern conditions should be applied; the concept and content of this activity, its organizational and procedural principles should be determined, its features should be distinguished, as well as proposals on the improvement of certain provisions of the current legislation in this area should be formulated.

In the article, the essence and specificities of the administrative and jurisdictional activity of law enforcement bodies of Ukraine are determined, in particular, the administrative and jurisdictional activity of law enforcement bodies of Ukraine is proposed to consider as the activity of law enforcement bodies (officials), regulated by the provisions of administrative and administrative procedure law, regarding the consideration and resolution of legal disputes, offenses, establishment of facts, providing a legal assessment of the behaviour of parties to a conflict situation, making a decision within the limits of a statutory competence, which is State power by nature and is aimed at protecting rights, freedoms of citizens, legitimate interests of society and the State.

The functions of the administrative and jurisdictional activity of law enforcement bodies are described, their specifics, a special content are indicated and their ability to be carried out both independently and interrelated, integrating with each other is underlined.

The principles of the administrative and jurisdictional activity of law enforcement bodies of Ukraine are characterised in the main.

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