REALITIES AND PROSPECTS FOR THE DEVELOPMENT OF THE RULE-OF-LAW STATE IN UKRAINE AND WORLDWIDE

Collective monograph

Lviv-Toruń
Liha-Pres
2019

Reviewers:

Prof. dr hab. ***Sabina Grabowska,*** *Uniwersytet Rzeszowski / University of Rzeszow (Republic of Poland);*

Prof. dr hab. ***Joanna Marszałek-Kawa,*** *Uniwersytet Mikołaja Kopernika w Toruniu / Nicolaus Copernicus University (Republic of Poland).*

Realities and prospects for the development of the rule-of-law state in Ukraine and worldwide : collective monograph / K. V. Berezhna, V. M. Kalashnikov, I. N. Klymiuk, T. V. Kornyakova, etc. – Lviv-Toruń : Liha-Pres, 2019. – 184 p.

ISBN 978-966-397-207-7

Liha-Pres is an international publishing house which belongs to the category „C" according to the classification of Research School for Socio-Economic and Natural Sciences of the Environment (SENSE) [isn: 3943, 1705, 1704, 1703, 1702, 1701; prefixMetCode: 978966397]. Official website – www.sense.nl.

ISBN 978-966-397-207-7

CONTENTS

DOI https://doi.org/10.36059/978-966-397-207-7/1-29

DEVELOPMENT OF THE CONCEPT OF LOCAL SELF-GOVERNMENT IN THE UNITED STATES

Berezhna K. V.

In most modern countries, local affairs are known to be governed both through the organs of State administration, which act as a peripheral link of the State apparatus, and through representative organs. Actually, they implement the right to exercise local self-government, envisaged by the constitutions of the developed democratic countries. Self-government bodies emerged in Europe in the times of developed feudalism as a direct counterweight to the absolute power of the center. Initially, these bodies were formed based on limited suffrage by wealthy citizens of the society, in whose interests serious voting qualification barriers (literacy, settled way of life and property) were set for ordinary citizens in the Middle Ages. As a result of the victory of the bourgeois revolutions, election of self-government officials in Europe, and then in the United States, was made more democratic, and self-governing bodies turned into close to the population structures that were in charge of activities of citizens.

When it comes to the national experience of the development of local self-government, it should be indicated that it began to take shape when the Ukrainian lands fell under the authority of Grand Duchy of Lithuania, where Magdeburg rights acquired legal force. It was when the legal basis for emerging of this phenomenon was created by the charters of medieval towns, and this became a certain way of making municipal form of self-government “legal”, which eventually was embodied in Magdeburg rights. Unfortunately, the development of the national law of local self-government was suspended later on, and under new historical conditions, the

democratic and legal Ukraine has to develop its own self-governing structures[1].

The Ukrainian science accepted the following definition of the phenomenon of local self-government: it is "the political-legal institution of democracy, through which the management of local affairs in the lower administrative territorial units is exercised by self-organization of residents of a specific territory by agreement and with the assistance of the State"[2]. However, this definition is not complete and correct, because in terms of the implementation of the course of Ukraine to join the democratic community of European States, it is necessary to take into account the fact that in the Law of the European Union (EU), before all, it goes about the phenomenon of the "local democracy". European science of municipal law relies on the normative definitions of such act as "The European Charter on Local Self-Government of the Council of Europe". From its content, it follows: "Local self-government outlines the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs. In a local democracy this right is conferred to councils or assemblies composed of members freely elected by secret ballot and directly accountable to their own local constituency. This adheres to the principle of subsidiarity, which ensures that problems are addressed by those institutions and civil society groups that are most competent and closest to citizens"[3].

As far as the approach of American scientists to this phenomenon is concerned, they are citizens of the only State in the world, in the constitutional law of which it was reflected that America has never been a social state and will never be such a state. As a result, American specialists in local self-government do not take much care of the problems of citizens seeking to participate directly in the administration of local affairs, and therefore, without any romantic

---

[1] Калашников В.М. Хмельников А.О. Принципи місцевого самоврядування: європейські стандарти та національне законодавство // *Держава і права. Збірник наукових праць. Юридичні і політичні науки.* Спецвипуск. Київ-Дніпро: Інститут держави і права НАН України, 2003. – С. 321–323.

[2] Великий енциклопедичний юридичний словник / за ред. Ю. С. Шемшученка. – Київ : Юридична думка, 2007. – 990 с., с. 478.

[3] Bulmer E.W. Local democracy. – URL: https://www.idea.int/publications/catalogue/local-democracy

attitude to manifestation of democracy of a local kind, they very briefly state the following: “Local democracy is the self-government of cities, towns, villages and districts by democratic means – typically, but not exclusively, through elected mayors, councils and other local officials». If so, the following should be stated: «Local self-government outlines the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs. In a local democracy this right is conferred to councils or assemblies composed of members freely elected by secret ballot and directly accountable to their own local constituency. This adheres to the principle of subsidiarity, which ensures that problems are addressed by those institutions and civil society groups that are most competent and closest to citizens”[4].

There is no doubt that the development of local self-government in Ukraine must be reinforced by the legal experience of democratic countries, where the right of local communities to take appropriate part in public government is stipulated at the constitutional level. Unfortunately, the national experts in the problems of local self-government focus their attention only on European municipal law. It is natural, since our State seeks to join the European Union. Not by chance the Ukrainian legislation reflects the European experience in solving the problems of local communities, referring to the main provisions of the European Charter of Local Self Government. Nevertheless, the four-century development of local self-government in the United States, which dates back to 1620, when the so-called “pilgrims” signed the famous “Mayflower Compact”, deserves great attention. In the text, the following is announced: “In the name of God, Amen. We whose names are under-written, the loyal subjects of our dread sovereign Lord, King James, by the grace of God, of Great Britain, France, and Ireland King, Defender of the Faith, etc.

Having undertaken, for the glory of God, and advancement of the Christian faith, and honor of our King and Country, a voyage to plant the first colony in the northern parts of Virginia, do by these presents solemnly and mutually, in the presence of God, and one of another, covenant and combine ourselves together into a civil body politic, for

[4] Local democracy/ – URL: https://www.alda-europe.eu/public/publications/168-EPD-Fact-Sheet-Local-democ racy-1.pdf

our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions and offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names at Cape Cod, the eleventh of November [New Style, November 21], in the year of the reign of our sovereign lord, King James, of England, France, and Ireland, the eighteenth, and of Scotland the fifty-fourth. Anno Dom. 1620»[5].

The text of this legal act is interpreted by modern-day specialists in the constitutional law of the United States as the first normative source of American constitutionalism. However, it was a very controversial document, the analysis of which, conducted by Ukrainian researcher V. M. Kalashnikov in his paper "The Conceptual Framework of the "Mayflower Compact" and Modern Constitutional Law of the United States" gives grounds to state only one thing – in the 1620, the colonists of New Plymouth laid the foundations of American local self-government, though the mother country provided them with the right to do it only some time later. It is also important that the countdown of the theories of the development of local self-government in America began from this compact[6].

1. Evolution of theories of law of local self-government of the united states

Needless to say that without an analysis of the legal principles of local self-government that have been ingrained in America for four centuries of the development of this country, it is not possible to find the right way to the formation of the national system of local self-government, which ensures democratic solutions to the problems of

[5] Text of Mayflower Compact. – URL: http://www.pilgrimhallmuseum.org/mayflower_compact_text.htm

[6] Калашников В.М. Концептуальні засади «Угоди на «Мейфлауєрі» і сучасне конституційне право США // *Держава і право. Збірник наукових праць. Юридичні і політичні науки*. – Київ: Інститут держави і права НАН України ім. В.М. Корецького, 2005. – С. 472–478.

local communities at their levels of public governance. This experience is impressive by the fact that four centuries of the development of American statehood demonstrated an impressive inseparable unity of the institutions of local governance, which were the heritage of British America, and local democracy, generated by the Americans after the Declaration of State sovereignty of the independent United States. This is pointed out by the known to the whole scientific world "Encyclopaedia Britannica", which provided the following description of local democracy of the United States, which largely coincides with a similar system that exists in Great Britain: "Municipality, in the United States is urban unit of local government. A municipality is a political subdivision of a state within which a municipal corporation has been established to provide general local government for a specific population concentration in a defined area. A municipality may be designated as a city, borough, village, or town, except in the New England states, New York, and Wisconsin, where the name town signifies a subdivision of the county or state by area. The municipality is one of several basic types of local government, the others being counties, townships, school districts, and special districts[7].

The British Encyclopaedia should stimulate the interest of researchers to modern local democracy of the United States, but first of all, they have to deal with the structural peculiarities of this "building", stipulated in the Main Law of the United States, the Constitutions of separate states and other legal acts regulating the implementation of the public power locally. Obviously, the versatility of the approaches to understanding the essence of local self-government is the result of a lasting impact on the theoretical and practical developments on the problem of the comprehensive concept of "power". This situation in legal science, public administration and social sciences is a consequence of the specified multidimensional phenomenon. The widespread use of the term "power" for the reflection of different phenomena in many areas leads to the fact that representatives of social sciences are forced to use the term "public" (social) power, although any power is public. The subsystem of

[7] Municipality local government. – URL: https://www.britannica.com/topic/municipality

public power is formed by every level of social integration that has certain mechanisms for identification and implementation of the will of the individuals composing it. Therefore, one should differentiate between the power of the world community, state power, municipal power and the power in citizens' communities.

This approach to the classification of subsystems of public power is maximally approximated to the external institutional level of their implementation in the theory and practice of the formation of local self-government bodies, which began to stand out of superior bodies of public power in the times of the transition of the countries in Europe from feudalism to early capitalism. All this stimulates scientific research in the field of studying the basic theories of the origin and development of the science of municipal law.

It is known that a systematic approach to providing local communities of the United States with managers, who competently solve problems of local self-government, began to be applied in America after World War II. Now, thirty-nine institutes of higher education grant diplomas in specialty "Development of local communities", what is more, seven institutions train Master degree students in this area. In addition, five areas of specialization appeared in this field, namely: 1) local community development planning; 2) economic development of local communities; 3) city problems; 4) development of agricultural regions; 5) local self-government. In this case, the scientific approach to understanding the problems of local self-government requires that American students should laboriously study the main theories of the origin and strengthening of local democrac[8].

Since early bourgeois revolutions, local self-government in different states evolved within the boundaries, set by Anglo-American and Roman-Germanic legal systems, which are characterized by different approaches to determining the content and features of legal regulation of the issues of local communities. Social scientific opinion regarding this problem has fallen into several areas, in the depths of which some of the theories of local self-government crystallized. They include the theory of free community, economic

[8] Муніципальне право України : підручник / за ред. М.О. Баймуратова. – К.: Правова єдність, 2009. – С. 99–100.

theory, legal theory, political theory, the state and organic theory. All these theories are based primarily on the genetic features of self-government in different countries.

Self-government is implemented in relevant institutional forms at all stages of the evolution of society. One should remember that throughout all the history of the civilized society, the tendency towards an increase in the share of central public administration in the system of public power has been strengthening, which resulted in absorption of self-government activities of territorial communities.

It should be specified that the government of medieval towns was rather conditional, since political and economic principles of the organization of a feudal society allowed only limited forms of realization of a self-governing capacity. And only at the time of formation of a bourgeois state did self-government as a centralized administration within any social system emerged. In addition, self-government appeared only in one country in the world, in the United States that originally went through the development of bourgeois society, immediately after the British colonies, which were later destined to be transformed into an independent state, appeared in North Americ[9].

The theory of local self-government was created by the ideologists of the earliest bourgeois revolutions (English, Great French revolution, first American revolution), which are known as "enlighteners". Their task was to substantiate the right of bourgeois owners to create a new social type of the state – a bourgeois state. That is why the enlighteners sought to find out the sources of their concept by turning to the fight of the bourgeoisie for its own right through the operation of self-governing local communities[10].

The main theoretical source of liberalism appeared to be the ideology of Enlightenment, which in the XVIII century experienced a great influence in the British colonial empire, due to the fact that the English revolution of the XVII century accelerated the development

[9] Andrews Ch. M. Virginia: the Old Dominion. – Richmond: The Dietz Press, Inc., 1949. – P. 120.

[10] Caldwell R.G. A Short History of the American People. – New York; L.: Low, Marston and Company, 1925. – P. 111.

of capitalist relations[11]. The Protestant Church also contributed to it. The Calvinist doctrine of definition and the Protestant ethic prompted by it led to wide spread of entrepreneurial spirit and thereby created a deep psychological foundation of capitalist civilization. England was the birthplace of the ideology of Enlightenment, which led to strengthening representative institutions that included local self-government bodies. The experience of the mother country in dealing with local affairs of that time was transplanted to America[12].

The most important foundations of the doctrine of local self-government of the theoretical nature were laid down at the end of the XVIII century. The constitutional movement, accepting state constitutionalism as the political-legal system of a civilized state, pushed by the American and French revolutions, led not only to emergence of new forms of organization of state power, but also inevitably set the task of the local self-government conversion on the basis that was free from strong bureaucratic supervision. It is clear that this task had to be solved in the framework of the Enlightenment ideology, the prominent representatives of which were American enlighteners[13].

The work of the English ideologists of the Enlightenment in the field of creation of the theoretical and practical foundations of local self-government was continued by Americans K. Kolden, B. Franklin and T. Jefferson. They relied on the doctrine of natural rights and freedoms, which included three mandatory components – life, liberty and property. An important component of the enlightening ideology appeared to be the theory of people's sovereignty and was closely associated with the idea of a social contract, the consequence of which was the emergence of civil society and the state that had to protect natural and inalienable human rights.

The teaching of enlighteners about the principles of the new state and political system, the foundation of which was the doctrine of

[11] Byrne T. Local Government in Britain. Everyone's Guide to How it All Works. – L.: London University Press, 2000. – P. 300.

[12] Калашніков В.М. Походження місцевого самоврядування в Сполучених Штатах Америки // *Юридичний вісник.* – Од.: ОНЮА, 2001. – № 2. – С. 107–112.

[13] American Philosophical Society, Library. Calendar of the Papers of Benjamin Franklin. – Vol. 1. – Film 54. – Reel 43, 85, 113.

power distribution, was based on the theory of social agreement. The American enlighteners linked the practical implementation of this doctrine in life to the development of local self-government in the different forms that, first of all, would be suitable in the existing natural environment[14].

Now we are looking for the forms of reaching the final result – developed self-government. When addressing this issue, it is necessary to distinguish between local management and local self-government, since at the present stage of development of the public power in different countries, it exists at two levels – state and self-government power. It is clear that the process of solving local problems is mostly influenced by those state authorities that solve the complex of local problems under the supervision of supreme political power. However, self-government bodies, which may not be removed from the national processes, participate in these processes. This demonstrates the development of local democracy in the United States. Hence, the increased attention to theoretical developments of American scientists in this field of law and their practical implementation.

T. Jefferson, one of the "Founding Fathers" of the United States, the third President and the author of the Declaration of Independence of the USA stood created the sources of the theory of citizens' solving their own affairs through the bodies of the territorial community[15]. He was a great planter – slave owner, but was guided by petty bourgeois and democratic views on the development of the United States as a Republic of farmers. That is why in his paper "Notes on the State of Virginia", he formulated a view on self-government of small communities, "the Republic in miniature" as the ideal form of statehood. Jefferson put forward the concept, according to which the municipalities were recognized as the fourth power that was controlled only by the law and by the court and was not subordinate to the government and its bodies in the centre and locally.

[14] American Philosophical Society, Library. Solomon Feinstone Collection of the American Revolution. – Reel 1, № 213, 219; Reel 2. № 888.

[15] American Philosophical Society, Library. Presidential Papers Microfilms. Thomas Jefferson Papers. Jeneral Correspondence, 1761–1826. Account Books for the Years 1767–1770. Reel 58, Serie 4; Reel 60, Serie 11–12.

It is enshrined in the Federal Constitution and the Constitutions of all States. The local self-government in Ukraine must develop in this direction[16].

The views of T. Jefferson on self-government were especially interesting. He considered small communities as an ideal form of the development and functioning of democratic statehood. This conceptual approach gave birth to the concept of a "layer cake", according to which municipalities were recognized as the fourth power, controlled by the law and the court, but not subordinate to the Government and its bodies in the center and locally. Based on this, we can conclude that the idea of independence of local self-government was a major theoretical achievement of the early bourgeois democracy[17].

In the nineteenth century, great attention was paid to the system of self-government developed in the United States by the French statesman, historian and writer A. de Tocqueville. He visited the young American State and in his famous work "Democracy in America" wrote that the communal institutions play the same role for establishing independence as primary schools for science. The nation can form the free government without public institutions, but it will gain the true spirit of freedom.

One of the central ideas in the concept of A. de Tocqueville is the idea that the original source of power is not a State, and not even the people, but rather voluntarily united individuals who control their own affairs. Under these circumstances, people form real civic awareness, sense of responsibility, ability to agree their interests with those of their neighbors and coordinate them. The ideal of Tocqueville was the society that functions as a set of free and self-governing associations and communities. He saw the real alternative

[16] Jefferson Th. Writings : Autobiography / Notes on the State of Virginia / Public and Private Papers / Addresses / Letters / [ed. by M.D. Peterson – New York City : Library of America, 1984. – 1600 p.

[17] Eggleston E. The Beginners of a Nation. – N. Y.; L.: Appleton and Co., 1927. – P. 351.

to the state autocracy in the systems of administration based on the principles of decentralization and self-government[18].

It is known that after the defeat of the European bourgeois-democratic revolution in 1848–1849, local self-government became an object of scientific research of the lawyers in those countries that did not implement the course to the final transition from the semi-feudal economic and political system to capitalism. The German specialists are especially prominent among the specified scientists. Under their influence, this problem has attracted attention of Russian specialists in the State law, especially at the time when they had to consolidate the bourgeois reforms of the 60-70s of the nineteenth century, including the reforms of agricultural and town governance. Then, they managed to include the concept of autonomy of communities in dealing with local affairs of economic character to the "Complete Code of Laws of the Russian Empire"[19].

A great contribution to scientific analysis of self-government, which originated as a result of the bourgeois reforms of the Government of Alexander III, was made by the lawyers of Kharkiv and Kiev universities, who found an appreciative audience in the form of democratically-minded students. Then the lawyers of Kharkiv and Kiev came to the conclusion that most scientific interpretation of the legal and organizational institution of the local self-government was offered by the Prussian lawyer R. Gneist. It is interesting that his research, which contributed to the development of the State law of the united Germany, helped American specialists in the Constitutional law to find specific opportunities to overcome the consequences of the Civil war of 1861–1865 through the development of the institution of local self-government[20].

It should be pointed out that University professors tried to continue to look for opportunities for the development of local self-

[18] Tocqueville A. de. Democracy in America / [Translator – H. Reeve]. – A Penn State Electronic Classics Series Publication. – P. 71–78. – URL: http://seas3.elte.hu/coursematerial/LojkoMiklos/Alexis-de-Tocqueville-Democracy-in-America.pdf

[19] Панейко Ю. Теоретичні основи самоврядування. – Лв.: Літопис, 2002. – С. 71–79.

[20] Ashford D. British Dogmatism and French Pragmatism: Central-Local Policymaking in the Welfare State. – L.: 1982. – P. 12.

government in the Ukrainian lands. To do this, they turned to "the theory of free community" of German scientists X. Zechariah and N. Gerber, who hoped that implementation of their theory would contribute to the development of the German Empire of Hohenzollerns. This theory was based on the postulates of the "natural right" of a person, put forward by the defenders of the "common human values", among which a decent place was occupied by American lawyers. According to them, the community by its nature has the right to their own functioning independently on the central power. It is based on the following: 1) public affairs are different from the state affairs; 2) community is an entity having special rights, existence of which excludes the state intervention in its affairs; 3) self-government officials are not representatives of the State, because they represent society[21].

The transition of the industrialized countries of the world to this stage of development of the market economy, which was called by known economists, lawyers and politicians of the countries of the West "the epoch of imperialism", first of all, led to the emergence of the "legal theory of self-government"[22]. Its essence was that the self-government bodies perform the functions of the state administration, but they are not bodies of the State as a legal entity, but rather of the local community. Therefore, the community itself, rather than state authorities can govern their affairs.

"The political theory of the local self-government" appeared in Russia during the bourgeois-democratic revolution in 1905–1907. Its author P. Stuchka, later the people's Commissar of Justice of the USSR, argued about the existence of antagonism of the people and the government, which can not deal with state and local affairs at the same time[23]. However, defenders of the polity of the Romanov and Hohenzollern empires, which had the major revolutionary movements at the beginning of the last century, put forth the "state theory', which is necessary for the success of the state in the fight against

[21] The Merriam Webster Dictionary. – Springfield, Massachusetts, USA: Merriam-Webster, Incorporated, 2001. – P. 181.

[22] Jellinek G. Allgemine Staatslehre. – Berlin, 1914. – Heft 1. – S. 629–631.

[23] Куйбіда В.С. Принципи і методи діяльності органів місцевого самоврядування. – К.: МАУП, 2004. – С. 21.

revolutionists. The Germans L. Stein and R. Gneist and the Russians N. Lazarevsky and V. Bezobrazov considered local self-government as a part of the state, since any government of the public nature is considered the state government[24]. Today, this theory exists in England, where the regions have considerable autonomy. And the link of the United States with its former mother country makes some American experts share this opinion[25].

A quick enumeration of the theories of local self-government convinces that it does not allow the one-dimensional vision. The studies of most modern supporters of the state nature of local self-government are focused solely on foreign-institutional forms of the state arrangement within the constitutional and legal developments of the problem.

It is natural that an entirely different approach to the essence of local self-government was formed in the Soviet period. After the proclamation of the Soviet State, Stuchka proposed "the organic theory" because the transition to the state theory as a new social type of a state did not entrench yet. The "social class theory" emerged in the USSR over time. In Soviet times, the legal and organizational institution of self-government as a form of self-organization of local communities did not find its proper development, and the term "local self-government" stopped to be used. This is evidenced by a number of legislative acts of the USSR. It is clear that it is very difficult to transfer from the Soviet representative system to the modern Ukrainian self-government system that is developing in a contradictory and inconsistent way. And yet, the world experience of creating self-government bodies, including experience of the U.S., is acceptable to solve problems of our society.

The essence of each of these theories is based on genetic features of self-government in the different states. Analyzing the specified phenomenon, one should take into account the fact that the ratio of the state and local self-government may not be constant at all stages of the society development. It is especially difficult to establish these

[24] Баймуратов М.А. Европейские стандарты локальной демократии и местное самоуправление в Украине. – Од.: Одиссей, 2000. – С. 5–9.

[25] Жакке Ж.-П. Конституционное право и политические институты – М.: Юристъ, 2002. – С. 200–203.

ratios at the stage of the development of the Ukrainian State, because we had no self-government in the form that is usual for developed countries.

All concepts of local self-government are characterized by significant historical conditionality and logical continuity. It is natural that scientific thought of every epoch of the development of a bourgeois society and appropriate state served to individual social transformation and had the imprint of historical, political and economic conditions for the emergence of this institution[26]. That is why it is possible to study the scientific views on the local self-government in the United States as early as during their being under the jurisdiction of England only from the positions of historical and logical sequence of their appearance. A local community as an entity can be given only rights, rather than power. Regulation of activity of local government entities by the state is implemented by using the commonly acceptable type of legal regulation. The state determines the legal boundaries of self-government activity, provides it with financial resources and uses, where necessary, the mechanisms for forced implementation of its decisions.

The concept of "self-government" describes the degree of participation of the social community in relationship of the administrative character. It is a form of the public-administrative regulation by a group of individuals united by common interests as a result of the compact living on a certain territory, their own vital activity at the level that can not be ensured by the centralized state administration[27].

Given the international experience, including that of America, of the development of local self-government, we will note that by local self-government one should imply the system of bodies and officials (in the first place, elected officials), conditioned by the state in the framework of current legislation, which exercise local self-government on a specific territory, for which the general state legislation established the degree of autonomy and independence

[26] Chandler J.A. Local Government Today. – Manchester: Manchester Univercity Press, 1996. – P. 181.

[27] Калашников В.М. Організаційно-правові засади місцевого управління і самоврядування в зарубіжних країнах. Монография. – Дн.: Пороги, 2009. – С. 7–8.

regarding state authorities. Self-governing bodies possess the necessary competence in dealing with the major state affairs and local issues that were passed to them. They operate taking into account specific features of the territory, its economic, social, ethnic, geographical, historical and other features, when it is necessary to replenish the local budget by collecting local taxes and establishing different duties, as well as during management of municipal property based of national legislation and their own statutory and other regulatory legal acts.

2. Modern state of science of municipal law of the USA

After World War II, the principles of subsidiarity, decentralization and regionalization were developing in the United States. The last two principles became the basis of the home state policy. The main focus of the subsidiarity principle is clear: after the defeat of fascism, contrary to the democratic centralism of socialist states, it was necessary to protect the autonomy of an individual and the right to self-government of lower political units. Subsidiary of power organization was contradicted to the authoritarianism of a centralized state. It guarantees its citizens freedom and independence, local and regional self-government. Profound changes in the socio-economic sphere led to the emergence of municipal theories related with the theory of social welfare state. The most prominent here is the theory of social service, under which municipalities were declared a tool which ensures and protects the interests of all classes and social layers. This theory provides an interpretation of the functions of municipalities as one of the manifestations of the super-class nature of the state of social welfare. It emphasizes the fact that the main task of municipalities is organization of population services.

The development of the general welfare state, expansion of the range of services provided to citizens had a double impact on functioning of local government. On the one hand, the role of local authorities in providing services to the population increased, which has stimulated the interest of the American States in the effectiveness of local self-government, on the other hand, intensified the centralization of the tax system, control of the center over the

activities of local administration, especially the cour[28]. The evolution of local self-government of the United States strengthened the state nature of municipal institutions, having connected local issues with general American ones, put municipal institutions in administrative and financial dependence on the government and ministries. That is why the modern municipal theory of the United States proves that self-government incorporates the elements of the statehood and those of public basis[29].

It is known that American specialists when analyzing the features of the legal enforcement of the institution of local self-government face the difficulties related to the fact that they still have to operate several definitions of this phenomenon at the same time. Among these definitions, there are "local self-government", "local administration", "municipal administration" and even "municipal management", which is the same as the previous definition. In this case, the term "local government", which in literal translation means "local administration" is used for the systemic definition of self-government. Thus, the term "local government" is used in the work of B. Bernham "Introduction to Law and Legal System of the United States", though the term "self-government" is not the same as the term "government". This is pointed out by the Constitutions of certain American states, where it is explained that it is indicated that "self-government' is a special political and legal capability of the population of cities in the United States[30].

Therefore, in the science of the United States, there is inconsistency on how to determine the right of local communities to govern local affairs. However, even though the scientists of Ukraine and the United States use and ambiguous approach to the notions of "local government" and "local self-government", it is possible to point out that in our legal system it is necessary to denote the process

[28] Муніципальне право України: підручник / [за ред. М.О. Баймуратова]. – К.: Правова єдність, 2009. – С. 112–123.

[29] Калашников В.М. Зародження концепції правовой державності у Сполучених Штатах Америки // *Держава та регіони. Науковий журнал*. – Запоріжжя: ЗІДМУ, 2001. – N 1. – С. 29.

[30] Burnham W. Introduction to the Law and Legal System of the United States (Coursebook). – Eagan, Minnesota West Academic Publishing, 2011. – P. 28.

of exercising administration by public power bodies, which are built on the principle of representative democracy, by the term "local self-government". It will be used not only in the sense of the institution of jurisprudence, but also to define the process of power implementation by government bodies of territorial communities. Other local authorities have to generalize the notion of "local executive bodies".

One of the important features that characterize contemporary American municipal science is "methodological revolution". It meant the acceptance of interdisciplinary approach (methods of sociology, political science, psychology, and social psychology, anthropology, law and public administration and other Humanities and quantitative research methods)[31].

In its stream, "new social", "new economic", "new political", "new labor" and many other "new" trends and schools originated, in the framework of which the researchers studied the features of state-building in the United States associated with the initiative of local communities regarding the solution of local problems. These schools and trends deserve attention because they claim to overcome subjectivity and voluntarism in social sciences, including those related to self-government development issues. Unfortunately, the excessive use of the structural-functional method of analysis, inherent in political science and sociology, leads to mechanical description of the changes in self-governing structures throughout the whole existence of the United States. However, despite all the features inherent in these scientific trends and schools, their representatives quite justifiably set the boundary, which separates the local democracy from political power.

American science rather meticulously highlighted the features that are characteristic only of local government. First of all, it concerns the nature of local power. State power is sovereign, capable of reforming itself, whereas local power is the bylaw power, which operates in the manner and within the limits defined for it through law. Thus, local, from the standpoint of American scholars, self-

[31] Орзих М.Ф., Баймуратов М.А. Международные стандарты местного управления: учеб. пособие. – Одесса: АО БАХВА, 1996. – С. 33–35.

government is characterized by the features of both power (state), and public institutions. Scientists of the United States acknowledge that a significant part of the local community's interests coincide with the interests of state-organized societies, which is normal for any country. As a result, there are no natural prerogatives of local groups to deal with local affairs without the state interference. Implementation of local interests is an attribute of both institutions of local self-government and the state ones. The only difference is in the extent of their participation in this process, which is adjusted by a complex social nature of local self-government that is not a single-dimensional system. It combines a number of features specific to the state organization and inherent in a civil society, and therefore, it should be considered as a special institute in the system of a society[32].

The role of self-government bodies is determined by the fact that in everyday life, citizens of almost all modern countries of the world constantly experience the consequences of the activities of these bodies, because the main feature of these structures is independent solution of a wide range of practical issues, referred to their power. Self-governing structures affect the creation of condition to ensure the vital activity of the population on the relevant territorial unit, although the main direction of socio-economic activity is determined by political authorities of the state. On the other hand, the fact that self-government bodies are related by organizational unity, endowed with powers concerning the ownership and disposal of municipal property, conclusion of contracts, disposal of the local budget. That's why under conditions of market economy, self-government is locally maintained and protected by the majority of the population of any country with the democratic political orde[33].

Lawmakers, who create the legal basis for the operation of local self-government, come from the fact that the participation of citizens in the administration of public affairs can be directly implemented

[32] Васильев В.И. Муниципальное управление: конспект лекцій / В.И. Васильев. – Ниж. Новг.: Изд. О.В. Гладкова, 2000. – С. 11.

[33] Dillon J. Commentaries on the Law of Municipal Corporation. – Boston: Viking Press, 1991. – P. 13.

only at the local level. In this case, it is obvious that the existence of local associations, endowed with real administrative powers, enables providing such administration, which would be most effective and closest to the needs of the population of a given territory community. Effectiveness and influence of local self-government bodies in different countries reflect the degree of democracy of the existing political regime.

Local self-government in the United States acquired the modern democratic character only after the end of World War II. Besides, the specified process has a positive impact despite the attempts of self-government officials to actively use local authorities as an additional tool for the development of national administration systems. Such a policy is smoothed in the western countries by the application of the new principle of institutional organization of the state and society – the principle of subsidiarity. It is based on the fact that a higher level of governing implies for the appropriate public officials certain possibilities of intervention in the action of government officials of a lower level of power executive activities only when the latter are not capable to implement independent effective administration of the society affairs. The direct application of the principle of subsidiarity implies the need for mandatory consideration of its practical effects on the distribution of powers. But it contradicts the basic principles of local self-government of the United States, where subsidiarity is not the principal but an additional problem-solving tool of local arrangement[34].

The methods of research into the main problems of the American state formation in the area of the separation of the state and local affairs, the ratio of political power and self-government bodies have always been a scalpel for the American specialists, with which they operated the facts that attracted their attention. Each of these specialists has his own specific methods of using such a tool for comprehension of the self-government specifics, but they all must

[34] Game C., Leach S. Political Parties and Local Democracy // *Local Democracy and Local Government*. – N.Y.: McMillan, 1994. – P. 127–149.

follow certain priorities for their work, which were provided by the political elite of the United States.

Interrelations between representatives of the official ideology of the United States are sometimes contradictory. They may include frequent sharp debates about the place of America in the world and on its internal development, including those in the field of solving local problems by territorial communities that have acquired now special weight as a result of the international financial crisis. A variety of ideological trends in the United States are the "left" and "right" wing radicals, conservatives and neoconservatives, liberals and neoliberals, libertarians and traditionalists[35].

These trends have internal differentiation, which creates in people, who are not familiar with the essence of ideological and political realities of the United States, the idea of existence of the ideological "pluralism" there. But behind the expansion of ideological liberty, there hide the constraints of ideologists of the "American way", their firm belief in its uniqueness and the advantage that is reflected in different social sciences, including those, the research object of which is American local self-government. Assessments of the American experience in this sphere of life of the citizens are given by lawyers, sociologists, political scientists, economists, philosophers, historians and politicians. In the modern United States, it is possible to observe a revival of the ideological principles of the "golden age" of the statehood, which remained in the last century. America is clearly trying to "revive itself" on the basis of a return to the "virtuous" law and morality of the past and hence follows the great interest in the history of the United States, including the history in the field of local self-government.

The indicated approach to the analysis of the essence of American local self-government does not seem to allow other interpretations, but this is not quite true. Indeed, the United States, their home and foreign policy attract very close attention, and it is not accidentally. They act so far as the leading capitalist country that, according to its

[35] O'Brien S. G. American Political Leaders: from Colonial Times to Present. – Santa Barbara: ABC–CLIO, Inc., 2001. – P. 33.

traditions, declares the advantages of the "American way of life", seeking to make it a model for the whole world. However, American men of power do not have and did not have any special doubts regarding the choice of the means for the implementation of such a policy. Promoting American "values", they rely on an enormous "ideological army", which includes professional social scientists and journalists. Interrelations between the representatives of the official ideology of the United States are sometimes very contradictory, and there are many sharp debates about America's place in the world and the ways of its internal development, which have now acquired special weight due to the impact of the international financial crisis. The range of modern ideological-political trends in the United States is also diverse: conservatives and neoconservatives, liberals and neoliberals, libertarians and traditionalists, left and right radicals.

Leading positions in modern American historiography of local self-government of the United States are held by the apologetic direction, which recognizes "American exclusivity" as the cornerstone of its science. It is intended to substantiate the "superiority" of the American people, who allegedly carried out a unique democratic experiment to address local issues by means of self-government from the time when the ancestors of modern Americans were under British jurisdiction.

The school of "consensus" ("conflict-free") had a leading role in the apologetic science of public administration and local self-government of the 50s in the last century. It was deeply influenced by the liberal-bourgeois idea, the positions of which were intensified due to the victory of the United States in the cold war. The constant alternation of liberal and conservative political cycles, which are characteristic of modern science of the United States, were best highlighted by Arthur M. Schlesinger, Jr. in "The Cycles of American History" (1986). He claimed that the "struggle between capitalist values – immunity of private property, maximizing profits, the cult of free market, survival of the fittest, and democratic values, such as equality, freedom, social responsibility and shared well-being" is going on in America. That is why, in his opinion, a great role in the United States is played by local self-government as an institution of

democracy, and there are no irreconcilable contradictions between private initiatives and functioning of local communities, because in America, capitalism involves democracy and democracy involves capitalism[36].

It should be pointed out that at the end of the era of dominance of Marxist ideology, a number of scientific studies of the peculiarities of local self-government in the United States appeared in the USSR. The authors of these works rejected categorically negative assessments of local self-government there and the works by American specialists in the field of life of their fellow citizens. They opposed the dogmatic positions about the impossibility of successful adaptation of capitalism to the needs of social progress. However, such a worldview leads a part of scholars to the short-sighted idealization of the values of Western civilization, which manifest themselves at the lower level of territory communities. In their interpretation, the United States appear as an ideal of political democracy and social justice, strengthened through the activities of local self-government bodies[37]. But life requires that the Ukrainian specialists in the local self-government should direct their efforts to strictly scientific objective study of the most important problems in the development of local self-government. If so, it should be remembered that American literature on the specified problem belongs mainly to the liberal direction of its studying.

In American municipal science, there is a comparatively small critical direction, which reflects the ideological position of the bourgeois and petty-bourgeois radicalism. Its chief apologist for a long time was the "progressist" school, the research interests of which focused mainly on the analysis of American state-building in the era of declaration of the United States independence, which was closely related with local self-government. Its founders including Ch. Bird, V. L. Parrington, A. Schlesinger, Sr., put forward a fruitful thesis

[36] Schlesinger A.M. The Cycles of American History. – N.Y.: Houghton Mifflin Harcourt, 1999. – P. 34.

[37] Калашников В.М. Генеза конституційного права США // *Правова держава. Щорічник наукових праць.* – Вип. 10. – К.: Ін. держ. і права, 2001. – С. 549–555.

about the existence of acute state conflicts in the American history, the highest expression of which were, in their interpretation, two American Revolutions. They considered the further development of local self-government as one of the results of these revolutions[38].

The "radical school" was developed within the framework of the critical direction in the United States in the 60-80s of the past century. Its representatives were under the influence of the critical directions of modern Western philosophy and sociology, from existentialism and the "Frankfurt School" to youth left-radical counterculture. Radical specialists in social sciences felt the impact of historical materialism. That is why they called themselves Marxists, although they did not recognize the need for a revolutionary transformation of capitalism. These scientists in some way used the method of historical materialism that contributed to the in-depth study of the sources of the local self-government.

At the end of the last century – at the beginning of this century, it seemed that in the science of the municipal law of the United States, there settled all the basic ideas of what is the nature of regulatory securing the rights of local communities of the United States to solve the problems of local life through the implementation of power administrative functions of their councils and mayors. American and English researchers, such as D. Ashford, T. Byrne, J.A. Chandler, J. Dillon, J.S. Holcombe R.G., Leach, D.J. Lacombe. J.A. Pica, J. Stewart, W.D. Valente, P. A. Watt and others, who together developed the Anglo-American science of municipal law, wrote about it. Here, they followed the concept of the guru of American liberals R. Hofstedter, who as early as in 1948 prophesied in his work "American Political Tradition" if the prosperity of all power institutions in America, including local authorities, is everlasting[39].

Thus, at first glance, the system of scientific knowledge about the legal basis of the American local self-government, developed by

[38] Hartz L. The Liberal Tradition in America. – Eugene; Oregon: Harvest Books, 1991. – P. 5.

[39] Hofstadter R. The American Political Tradition: And the Men Who Made it. – New York City: Vintage Books Publishing, 1989. – 560 p.

Anglo-American researchers had to be fairly stable for many decades. Nevertheless, as early as in 1987, the well-known researcher of public legal policy of the United States M. Gottdiener warned in his monograph "The decline of Urban Policy" against such poorly grounded ideas. And he was right, because the revolutionary transformations, which were caused by the epoch-making crisis of the geopolitical "world arrangement structure, are now going on in the state legal policy of the United States. Like in the period of the Great depression when President F. D. Roosevelt initiated the "new course", it again started in America. There was a mismatch of the declared goal of general welfare and the resources that were in possession of the United States and other developed countries. That is why President D. Trump started the economic, political and social reforms that resemble an earthquake. The current leader of the United States gave the place in there reforms to the local self-government, which largely will be weakened because no sufficient funds for supporting the financial foundation of local self-government at least at the previous level were not found in the budget of the richest state in the world.

It is therefore not surprising that, as the American scientist M. Hendrix, the author of the research "The case of local self-government", is writing, they actually got lost and demonstrated that they cannot yet grasp the essence of D. Trump's ideas regarding local democracy. They are studying legal philosophy of D. Trump and make very "brief" conclusions on this matter. The essence of their speculations is that strong traditions of local self-government in the United States gradually began to be pushed off by considerations of efficiency and rationality, due to which it is necessary to discard the models of functioning of local institutions of power, which do not live up to the corresponding expectations. However, their prediction of further destiny of American local self-government is shaky, because they understand that only the Government of the United States will "instruct" the governments of the separate states on the improvement of the legal framework of local self-government, and in the near future, states may have to cope with the aftermath of a

serious load of problems that was laid on them by President D. Trump.

CONCLUSIONS

The development of local self-government has been going on along with the development of the central power and administration for four centuries of the development of American statehood in this country. Its principles were generated by the ideologues of American enlightenment, who largely borrowed the experience of solving this problem from the European science. However, these ideas have acquired a purely American face in the American soil. Actually, B. Franklin, J. Washington, T. Jefferson and other leaders of the American revolutionaries bequeathed it to their successors. On the waves of the victorious war for the independence of the United States, they began to form a new political and economic system of this country, in which the place for new principles of local self-government was found.

The modern American science of municipal law and administration is diverse. Leading positions in it are held by the apologetic direction which recognizes "American exclusivity", "superiority" of the American people, who allegedly carried out a unique democratic experiment to address local issues by means of self-government. The school of "consensus" ("conflict free") that followed the liberal-bourgeois idea was the leader of the apologetic science of local self-government. Along with this, in the modern American science there is a critical direction that reflects the world outlook positions of petty-bourgeois radicalism.

At the end of the last century – at the beginning of this century, it seemed that in the science of the municipal law of the United States, there settled all the basic ideas of what the nature of regulatory securing the rights of local communities of the United States is. However, the globalization crisis led to the beginning of great economic, political and social reforms of President of the United States D. Trump, which have a significant impact on the American science of municipal law and administration. In the nearest future we should expect the "methodological revolution" in this science, the

representatives of which are obliged to give response to the globalization crisis through the generation of new approaches to the analysis of the legal principles of local democracy in the country – leader of the world community.

SUMMARY

The article deals with the peculiarities of development of the concept of local self-government in the United States. Evolution of theories of law of local self-government of the United States is investigated. The concepts of local self-government are characterized. Modern state of science of municipal law of the USA is analyzed. One of the important features that characterize contemporary American municipal science – "methodological revolution" is studied. It is determined that the principles of local self-government were generated by the ideologues of American enlightenment, who largely borrowed the experience of solving this problem from the European science. It is revealed that leading positions in the modern American science of municipal law and administration are held by the apologetic direction which recognizes "American exclusivity", "superiority" of the American people, who allegedly carried out a unique democratic experiment to address local issues by means of self-government.

REFERENCES

1. Калашников В.М. Хмельников А.О. Принципи місцевого самоврядування: європейські стандарти та національне законодавство // *Держава і права. Збірник наукових праць. Юридичні і політичні науки.* Спецвипуск. Київ-Дніпро: Інститут держави і права НАН України, 2003. – С. 321–323.

2. Великий енциклопедичний юридичний словник / за ред. Ю. С. Шемшученка. – Київ : Юридична думка, 2007. – 990 с., с. 478.

3. Bulmer E.W. Local democracy. – URL: https://www.idea.int/ publications/ catalogue/local-democracy

4. Local democracy. – URL: https://www.alda-europe.eu/public/ publications/168-EPD-Fact-Sheet-Local-democracy-1.pdf

5. Text of Mayflower Compact. – URL: http://www.pilgrimhallmuseum.org/mayflower_compact_text.htm

6. Калашников В.М. Концептуальні засади «Угоди на «Мейфлауєрі» і сучасне конституційне право США // *Держава і право. Збірник наукових праць. Юридичні і політичні науки.* – Київ: Інститут держави і права НАН України ім. В.М. Корецького, 2005. – С. 472–478.

7. Municipality local government. – URL: https://www.britannica.com/topic/ municipality

8. Муніципальне право України: підручник / за ред. М.О. Баймуратова. – К.: Правова єдність, 2009. – С. 99–100.

9. Andrews Ch. M. Virginia: the Old Dominion. – Richmond: The Dietz Press, Inc., 1949. – P. 120.

10. Caldwell R.G. A Short History of the American People. – New York; L.: Low, Marston and Company, 1925. – P. 111.

11. Byrne T. Local Government in Britain. Everyone's Guide to How it All Works. – L.: London University Press, 2000. – P. 300.

12. Калашніков В.М. Походження місцевого самоврядування в Сполучених Штатах Америки // *Юридичний вісник*. – Од.: ОНЮА, 2001. – № 2. – С. 107–112.

13. American Philosophical Society, Library. Calendar of the Papers of Benjamin Franklin. – Vol. 1. – Film 54. – Reel 43, 85, 113.

14. American Philosophical Society, Library. Solomon Feinstone Collection of the American Revolution. – Reel 1, № 213, 219; Reel 2. № 888.

15. American Philosophical Society, Library. Presidential Papers Microfilms. Thomas Jefferson Papers. Jeneral Correspondence, 1761–1826. Account Books for the Years 1767–1770. Reel 58, Serie 4; Reel 60, Serie 11–12.

16. Jefferson Th. Writings : Autobiography / Notes on the State of Virginia / Public and Private Papers / Addresses / Letters / [ed. by M.D. Peterson – New York City : Library of America, 1984. – 1600 p.

17. Eggleston E. The Beginners of a Nation. – N. Y.; L. : Appleton and Co., 1927. – P. 351.

18. Tocqueville A. de. Democracy in America / [Translator – H. Reeve]. – A Penn State Electronic Classics Series Publication. –

P. 71–78. – URL: http:// seas3.elte.hu/coursematerial/ LojkoMiklos/ Alexis-de-Tocqueville-Democracy-in-America.pdf

19. Панейко Ю. Теоретичні основи самоврядування. – Лв.: Літопис, 2002. – С. 71–79.

20. Ashford D. British Dogmatism and French Prahmatism: Central-Local Policymaking in the Welfare State. – L.: 1982. – P. 12.

21. The Merriam Webster Dictionary. – Springfield, Massachusetts, USA: Merriam-Webster, Incorporated, 2001. – P. 181.

22. Jellinek G. Allgemine Staatslehre. – Berlin, 1914. – Heft 1. – S. 629–631.

23. Куйбіда В.С. Принципи і методи діяльності органів місцевого самоврядування. – К.: МАУП, 2004. – С. 21.

24. Баймуратов М.А. Европейские стандарты локальной демократии и местное самоуправление в Украине. – Од.: Одиссей, 2000. – С. 5–9.

25. Жакке Ж.-П. Конституционное право и политические институты – М.: Юристъ, 2002. – С. 200–203.

26. Chandler J.A. Local Government Today. – Manchester: Manchester Univercity Press, 1996. – P. 181.

27. Калашников В.М. Організаційно-правові засади місцевого управління і самоврядування в зарубіжних країнах. Монография. – Дн.: Пороги, 2009. – С. 7–8.

28. Муніципальне право України: підручник / [за ред. М.О. Баймуратова]. – К.: Правова єдність, 2009. – С. 112–123.

29. Калашников В.М. Зародження концепції правовой державності у Сполучених Штатах Америки // *Держава та регіони. Науковий журнал*. – Запоріжжя: ЗІДМУ, 2001. – N 1. – С. 29.

30. Burnham W. Introduction to the Law and Legal System of the United States (Coursebook). – Eagan, Minnesota West Academic Publishing, 2011. – P. 28.

31. Орзих М.Ф., Баймуратов М.А. Международные стандарты местного управления: учеб. пособие. – Одесса: АО БАХВА, 1996. – С. 33–35.

32. Васильев В.И. Муниципальное управление: конспект лекцій / В.И. Васильев. – Ниж. Новг.: Изд. О.В. Гладкова, 2000. – С. 11.

33. Dillon J. Commentaries on the Law of Municipal Corporation. – Boston: Viking Press, 1991. – P. 13.

34. Game C., Leach S. Political Parties and Local Democracy // *Local Democracy and Local Government*. – N.Y.: McMillan, 1994. – P. 127–149.

35. O'Brien S. G. American Political Leaders: from Colonial Times to Present. – Santa Barbara: ABC–CLIO, Inc., 2001. – P. 33.

36. Schlesinger A.M. The Cycles of American History. – N.Y.: Houghton Mifflin Harcourt, 1999. – P. 34.

37. Калашников В.М. Генеза конституційного права США // *Правова держава. Щорічник наукових праць.* – Вип. 10. – К.: Ін. держ. і права, 2001. – С. 549–555.

38. Hartz L. The Liberal Tradition in America. – Eugene; Oregon: Harvest Books, 1991. – P. 5.

39. Hofstadter R. The American Political Tradition: And the Men Who Made it. – New York City: Vintage Books Publishing, 1989. – 560 p.

Information about the author:
Berezhna K. V.,
Doctor of Juridical Sciences, Associated Professor,
Head of the European and International Law Department
Oles Honchar Dnipro National University
72, Haharin av., Dnipro, Ukraine

DOI https://doi.org/10.36059/978-966-397-207-7/30-56

SPECIFIC FEATURES OF STATE FORMATION AND LEGAL POLICY OF PRESIDENT D. TRUMP

Kalashnikov V. M.

INTRODUCTION

It is known that at the beginning of this century the phenomenon, which is commonly known as "globalization", entered a period of a crisis. This crisis, the reasons for which existed in globalization from the very beginning, has economic, socio-cultural and geo-cultural aspects. The first group of causes was laid down in the geo-cultural economic model, which has its own special system of values and economic imperatives imposed by the Western civilization that is consuming by nature. The second group of causes of the globalization crisis is the mismatch of the goals, such as spreading freedom and democracy, commodity prosperity and consumer satisfaction, which were claimed by the Western civilization elite, and actual opportunities for their implementation. US President D. Trump was the first among the majority of the American elite to understand these realities, having taken into account that the gross domestic product of America today makes up only a quarter of the world's GDP, whereas it made up 40 % in 1960.

President D. Trump and the people holding the same view can not put up with the new realities in the world market development, which demonstrate the fall of American hegemony. That is why there started such transformations of the American economy, which are considered by many politicians and scientists of the Western countries to be the repetition and development of the "New course" of the USA President F.D. Roosevelt. Indeed, Trump's reforms signify a break-up with the traditional policy of the American state, not only in the economic sphere, but also in all spheres of public life of the leading country in the world community.

A state is a multi-faceted phenomenon, which became an integral part of society as early as six thousand years ago. Only it performs various regulatory functions in the society, actively influencing the

formation of new social structures and spiritual life of people. In this regard, the task of establishing the limits of the state interference in the processes that are inherent in social life is important in order to use predominantly the positive aspects of such influence. And this interference is a state and legal policy of a particular country.

Nowadays, in the scientific literature there are different interpretations of the notion of "politics". Based on the achievements of the scientific research of the thinkers of the past in the field of comprehension of the phenomenon of a state and legal politics, national scientists must come to understand that politics is also the art of the possible, the art of compromises, and the art of agreement of the desired and objectively achievable. Politics finishes beyond the boundaries of the possible, giving way to subjectivism, voluntarism, and often, to adventure. Therefore, the notion of "politics" is used to refer to deliberately organized activities, necessary and expedient within a certain period. As a rule, it is the activity of the state governing bodies and state administration, parties and public associations. Hence, it follows that the politics, in a broad sense, should be defined as an interaction of people, groups, nations, and classes through the implementation of state power. At the same time, we are dealing with legal policy in the case when a state relies on the law in the process of power regulation.

The state regulates all major areas of vital activities of the society. However, if they are intertwined and become interdependent, the policy regulating these spheres is a single whole. This is what has been inherent in the history of the state and the law of the USA since 1607, when the British colony of Virginia – a center of the future superpower – emerged. That was the first element of the grandiose structure, the early America, which became the only state in the world history to be the first to develop in the capitalist way.

It was then that the principles of the legal policy of the American society were perfectly stated by a professional lawyer, the second Governor of the Massachusetts colony, J. Winthrop. In the document entitled "A Model of Christian Charity" (1630), he put forward such new for that time concepts as "natural law" and "charity agreement". However, in practice, Winthrop took care only of protecting the right to private property from criminal encroachment of the poorest. He was guided by the belief in the eternity of social inequality, having

declared the following: “GOD ALMIGHTY in his most holy and wise providence, hath so disposed of the condition of’ mankind, as in all times some must be rich, some poor, some high and eminent in power and dignity; others mean and in submission”[1]. And such approaches to the solution of complex social problems for a long time met the interests of the dominant classes of the population of the colonial America. This is what became the symbol of faith of the founders of independent America.

The well-known American scientist, A. Schlesinger, Jr., the author of the monograph “The Cycles of American History”, pointed out that the essence of the state policy of his country should be considered through the prism of the messianic ideology. He also wrote: “the struggle between capitalist values – the inviolability of private property, the maximization of profits, the cult of the free market, the survival of the strongest – and democratic values – of equality, freedom, social responsibility and general welfare continues in America. Therefore, in his opinion, the great interest in the United States is the private interest of any citizen of the country-leader of the world community, because in America, capitalism includes democracy, and democracy is capitalism”[2].

L. Harts in his research “Liberal tradition in America” developed the ideas of Schlesinger, Jr. He pointed out the following: “If America is a country of eccentric embodiment of liberalism, then the peoples of the whole world are not tied to its hope to save all the best that it has presented to the world”[3].

Thus, it is obvious that the USA have a solid ideological foundation of the legal policy, which has been generated for four centuries. That is why American ideology, which is an effective means of influencing the mass public consciousness, has always relied on historical examples when it comes to any problem of state building. This instrument was particularly well used by the American

[1] Foundations of Colonial America; a Documentary History : in 3 vols. / ed. by W. K. Kavenagh. – N. Y.: Chelsea House Publishers, 1973. – Vol. 1. – P. 45–49.

[2] Schlesinger A.M. The Cycles of American History. – N.Y.: Houghton Mifflin Harcourt, 1999. – P. 34.

[3] Hartz L. The Liberal Tradition in America. – Eugene; Oregon: Harvest Books, 1991. – P. 5.

presidents who received professional legal education. They included T. Jefferson, A. Lincoln, F. D. Roosevelt, H. Truman, J. Kennedy, R. Nixon, B. Clinton and B. Obama. Therefore, it is not surprising that even a professional land surveyor and commander J. Washington who chaired the Philadelphia constitutional convent, made it possible for the provisions on certain features of American legal ideology to be included in the Constitution of the USA[4].

In the USA of modern times, there is a revival of the ideological directions of the "golden age" which became a thing of the past in the last century. Obviously, America is trying to "restore to life" on the basis of returning to "virtual" rights and morale of the USA past. Current President D. Trump continues to implement the wills of the authors of the American Constitution.

In scientific literature, there are different interpretations of the notion "policy". In some cases, it is used to denote the procedure for making governmental power-regulatory decisions. In other cases, this notion is used to refer to deliberately organized activities, which is necessary and expedient within certain time.

Formation of the legal policy is an objective necessity in a democratic state, where the rule of law prevails. The managerial function of law, the role and significance of legal awareness are steadily increasing and becoming stronger, and agreement principles of legal regulation are expanding, which also proves the actualization of issues of legal policy. The influence of politics on the law is permanently manifested in public law, which reflects the specific features of the interaction of the state with other entities of public life.

All entities of political and legal life are involved in the formation and implementation of the legal policy to a greater or lesser extent. This is clearly reflected in functioning of the state bodies of democratic and legal world countries headed by the United States, whose experience of the historical development of state and legal policy is an example for resolving the pressing problems of the development of society in Ukraine.

[4] American Philosophical Society, Library. Weedon George Henry (1730–1790), General Military Correspondence and Other Materials. – № 131, 139.

1. Main features of D. Trump's foreign policy

The Universal Declaration of Human Rights is the first global expression of the integral rights of all people. Composed by representatives of many countries, where different legal and cultural traditions existed and still exist, it was proclaimed by the United Nations General Assembly in Paris on December 10, 1948 as the only standard for the protection of human rights for all peoples. Academician V. Koretsky, a native of the city of Dnipro, was among the creators of the text of the Universal Declaration of Human Rights. Moreover, he became the author of the first article of the Declaration: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"[5]. Only this first article was voted for without objections by all members of the UNO Commission.

It is known that the universal standards of human rights that were first enshrined in the Universal Declaration of Human Rights and then reflected in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are widely used in the world not only in peaceful times, but also during armed conflicts. It is not accidental that E. Roosevelt, an American public figure, the wife of US President Franklin Delano Roosevelt, called it the Great Charter the freedoms for all humanity, because its provisions are universal for all countries of the world[6].

Unfortunately, not everything is so "smooth" with the American experience in protecting human rights, which is embodied in the practice of US state formation led by their presidents, starting with G. Truman. Their policy is aimed at the formation, development and preservation of common civilized values in accordance with the "American way of life". And President D. Trump, who believes that the Universal Declaration of Human Rights is not needed for

[5] Universal Declaration of Human Rights. United Nations // URL: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

[6] Glendon M.A. A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights. – N.Y.: Random House Trade Paperbacks, 2001. – P. 4–5.

America, as this country has its own special system of values, has recently reminded the world about it.

Undoubtedly, the United States, as the leader of the world community, set certain standards of the humanitarian policy for the entire civilized mankind, however, only a part of these standards in the field of human rights is applied in the United States. This approach to the interaction of the national law of the United States with the system of international law dates back to the time when this country was gaining sovereignty as a result of the victory in the war for independence against the British colonial empire. At the dawn of American statehood, the "Founding Fathers" of the United States had to take into account the reaction of the European countries to American criminal justice proceedings with a foreign element. Therefore, the Act on the Judiciary of 1789 refers to the fact that one of the sources of criminal procedural law should be an international legal tradition[7]. However, the dogma, according to which the resolution of all disputed problems should rely only on the national law, is much more important for the implementation of not only legal proceedings, but also for any other legal agreements affecting the rights and freedoms of the citizens of the United States[8].

The specific interest to the international legal traditions in the area of defending human rights and freedoms is constantly heated by the resolutions of the Supreme Court of the USA. This body of the highest state power was previously supposed to offer explanations as for how to use the sources of the international law in order to implement the American humanitarian policy. In this case, the law priests in the USA always referred in their decisions to the impact of the well-known research of E. de Wattel "The Right of the Nations".

Following the example of the "Founding Fathers", the elite of the country – leader of the world community originally supported the Universal Declaration of Human Rights. However, soon after, America began to show the signs of opposition to the international

[7] Stacy L., Gardiner Ch.L. Criminal Justice Policy. – 2013 / [Text]. – URL: https://play.google.com/store/books/details/Stacy_L_Mallicoat_Criminal_Justice_Policy?id=nhlzAwAAQBAJ

[8] The Judiciary Act of 1789. – URL: http: //www. constitution.org/uslaw/judiciary_1789.htm

system of human rights protection. One of the reasons for this was that during the Cold War, the United States tried not to give its ideological enemies the opportunity to criticize their internal humanitarian policy, such as the discrimination of racial minorities in the form of the laws of Jim Crow. Therefore, the US government did not want to change the discriminatory racial policy as a result of ratification of an international treaty.

It should be emphasized that when the United States ratify the human rights treaty, they almost always add to it a declaration of circumstances that would prevent the protection of certain rights of this kind on their territory. In the US law, two types of warnings for treaties were established. Firstly, the treaty may not "be self-implemented", because a special legislation is needed to implement it in the judicial institutions of America, which Congress is very reluctant to have.

Another warning is called "Restrictions to the scope of the treaty". This means that the United States have the right to be guided only by their own legal framework in respect of the fulfillment of the terms of the treaty, since they have already settled this problem in the Bill of Rights. On this basis, the United States insist that they will not fulfill any part of the treaty, if its content contradicts the American Constitution[9].

America always kept telling the outside world, that many of the rights set forth in the Constitution are equivalent to the rights enshrined in the Universal Declaration of Human Rights and some other pacts, in which, the need for non-changeable protection of human rights and freedoms throughout the world is proclaimed on behalf of the international community. In addition, American propagandists draw the attention of the world community to the fact that the US Supreme Court has determined the fundamental rights that are not explicitly mentioned in the Constitution, such as the presumption of innocence in the criminal process and the freedom of movement. The US Congress also passes the laws that protect constitutional rights and provide protection for victims of human rights violations, when litigation may be too expensive or complex.

[9] Human Rights. – URL: https: // www.state.gov/j/drl/hr/

The most important of these national laws are those that prohibit discrimination, including discrimination on the grounds of race, sex, religion or disability[10].

Thus, the United States believe that the US Constitution provided some protection for civil and political rights, so it is not necessary for America to turn to the economic, social and cultural rights guaranteed by the Universal Declaration of Human Rights. That is why the US government has not yet ratified important treaties related to human rights. As far as the humanitarian policy of the incumbent US President D. Trump is concerned, he regularly criticizes the United Nations for inefficient work and excessive expenditures.

From now on, the entire Western world is in a state of despair, as the leaders of the allies consider the Human Rights Council to be a tool for global governance, through which they have succeeded in promoting their own values as a matrix for all countries of the world. Washington's decision to withdraw from the Human Rights Council is a striking example of rejection of the concept of multilateralism in international relations[11]. D. Trump finally chose a nationally oriented American strategy based on bilateral agreements, and he agrees to work only with those foreign leaders, with whom it is beneficial to have some kind of relationship. That is why the Universal Human Rights Declaration is not directly related to the United States, and this is very sad for the entire civilized world. Against this background, D. Trump "solves" the most important problems of protecting human rights in his own country somehow unnoticeably. The "Indian problem" still remains among these problems since the proclamation of US independence from the United Kingdom.

It is known that the founders of the United States took care that the land of aborigines, captured by America, should be formalized as a "legitimate prize" for the civilized American nation that "defended

[10] Human Rights and United States Law. – URL: http:// www.theadvocatesforhumanrights.org/human_rights_and_the_united_states

[11] U.S. Withdraws from U.N. Human Rights Council Over Perceived Bias Against Israel. – URL: https://www. washingtonpost.com/world/national-security/us-expected-to-back-away-from-un-human-rights-council/2018/06/19/ a49c2d0c-733c-11e8-b4b7-308400242c2e_story. html?utm_term=.358873b15730

itself from savages"[12]. The current president is trying to sanctify his own aboriginal policy, which is driven by the warnings and the cult of the Founding Fathers. Moreover, at the height of the struggle with political opponents, the head of the American state uses unacceptable methods to justify his Indian policy. That is why the National Congress of American Indians (NCAI), the oldest, the largest and the most representative organization of American Indians, recently condemned the words of D. Trump that the ancestors of the Indians themselves are to blame for the fact that their uprisings in Wounded-Knee and Little Big Horng were suppressed by US troops: "You can not attack political opponents, as it was against Senator Elizabeth Warren. We condemn in the strongest possible terms the casual and callous use of these events as part of a political attack. Hundreds of Lakota, Cheyenne, and Arapaho people lost their lives at the hands of the invading U.S. Army during these events, and their memories should not be desecrated as a rhetorical punch line"[13].

Thus, after the "humanitarian transformations" of D.Trump, the entire Western world is in a state of despair, as its leaders consider the Human Rights Council to be a tool for global governance, through which they have succeeded in promoting their own values as a matrix for all countries of the world. Not long ago, the USA were the main participant of the global policy, but Washington's decision to withdraw from the Human Rights Council is a striking example of rejection of the concept of multilateralism in international relation. A new blow to the western community was hit by D. Trump's economic policy, the legal principles of which deserve closer attention.

It is known that, in the opinion of the political leaders of the leading countries of the world, the foreign economic policy of the

[12] American Philosophical Society, Library. Calendar of the Papers of Benjamin Franklin. – Vol. 1. – Film 54. – Reel 43, 107, 113; American Philosophical Society, Library. Presidential Papers Microfilms. Thomas Jefferson Papers. Jeneral Correspondence, 1761–1826. Account Books for the Years 1767–1770. Reel 58, Serie 4; Reel 59, Serie 4–5; Reel 60, Serie 11–12.

[13] NCAI Denounces President Trump's Invoking of Wounded Knee Massacre and Battle of Little Bighorn in Political Attack. – URL. – Режим доступу: http://www.ncai.org/news/articles/2019/01/14/ncai-denounces-president-trump-s-invoking-of-wounded-knee-massacre-and-battle-of-little-bighorn-in-political-attack

American leader may cause damage to the world economy. Therefore, the US Chamber of Commerce, representing the interests of most of the country's business elite, argues that Trump's reforms could lead to a world trade war that will strike a blow to the purse of American consumers. However, Trump, who is believed to be "an elephant in a crockery", is in fact a deeply educated person who can understand the intricacies of the home and foreign policy of the United States, because he got education at the New York Military Academy and the Wharton School of Business, from which he graduated in 1968 with Bachelor's Degree in Economics and specialization in Finance[14].

It should be noted that none of Trump's biographers pays attention to the fact that the cadets of the Military Academy and students of the Business School are very scrupulously studying home and foreign history. That is why, apparently, Trump attaches much attention to the experience of state building the founders of the United States. He knows that the Founding Fathers of the country-leader of the world community played simultaneously a number of roles throughout their conscious lives, including the following: a planter and slave-owner, an oppressor of white bonded slaves, a merchant of African captives, a smuggler, a pirate, a land speculator, a hard-core bankrupt, a financial fraudster, a money launderer of municipal bodies, a caper (a commercial pirate), an organizer and a participant in the genocide of the Indians of the North America, a sadist, who oppressed his own temporary (whites) and life-long (blacks) slaves, a politician, a religious bigot, a perjurer, etc.[15]. In addition, on the top of the list there is such a notion as a "separatist", that is, a person who betrayed the oath of loyalty to the British monarchy, resulting in his being for a long time in a tumultuous position of a criminal offender, for who a sturdy rope was waiting. That is why Trump realized: with the present heirs of the creators of bourgeois America, who do not imagine the historical process without immediate benefit, one can

[14] Duignan B. Donald Trump President of the United States. – URL: https://www.britannica.com/ biography/Donald-Trump

[15] Калашников В. М., Малишко В.М. Формування інститутів держави і права в США ранньої доби (1607–1775 роки). Монографія. – К.: Логос, 2015. – С. 9.

only destroy the country-leader of the world. So, he became a supporter of F.D. Roosevelt with his "new course", due to which America escaped destruction in the 1930s.

In fact, in economy, president-businessman Trump follows the slogan "America comes first" and plans to introduce customs barriers. If his plan is implemented, it will become a significant blow to the global economy, as experts warn. And our country is bound to suffer from it, since there is a rule of profit pursuers: "Nothing personal, only business". Unfortunately, the general public of Ukraine, who are counting on the fact that the United States will save the economy of our country from a decline under conditions of a globalization crisis, are mistaken. There is only one sober view among our compatriots on this matter, stated in the Internet. It goes about the article of O. Kushch "Problems of Indians have nothing to do with the sheriff. Why the United States introduce duties against such countries as Ukraine", which was published in May, 201[16].

It is known that the economic policy of any state is an inseparable part of the development of world integration processes. Therefore, the growth of foreign trade relations and scientific and technical cooperation of Ukraine with developed foreign countries, first of all, with the USA, is an important condition for the success of the national foreign policy. Recently, the US really helped us solve the pressing economic problems. The State Statistical Service of Ukraine informed that during 2017, the volume of mutual trade and investments between Ukraine and the USA increased fourfold. However, it's too early to rejoice at this, since D. Trump appeared to have other than B. Obama views on cooperation in the economic field, even with the closest allies of Americans.

It should be remembered that during his election campaign, Trump subjected to devastating criticism the countries that exported to the United States more goods than they imported with the label "made in USA". So, it is not surprising that our country is among the ones, to which Trump decided to make a "gift" in the form of high customs

[16] Кущ О. Проблемы индейцев шерифа не волнуют: Зачем США вводят пошлины против таких стран, как Украина. – URL: https:// 112.ua/ mnenie/problemy-indeycev-sherifa-ne-volnuyut-zachem-ssha-vvodyat-poshliny-protiv-takih-stran-kak-ukraina-444994.html

tariffs. In the spring of 2018, the US Trade Representative Office told the whole world that it suspended duty-free trade for 155 product groups, namely: the products of food, light, woodworking industries, machine-building, and electrical appliances[17]. The United States immediately made a decision to protect copyright and related rights from the encroachment on the part of China and other countries. The Americans gave their trading partners 120 days to get ready for the new relationship with the American party. That is why our country also suffered. Recently, a 25% duty was imposed on steel supplies to the US market, which could affect our manufacturers of pipe and wheel pairs. It is true that the US allowed us to supply food, products of light industry and woodworking, and linen clothing to the US market, but the cost of these supplies in the 2017 amounted to ridiculous 64 million, 2 million, 13 million and 2 million dollars, respectively.

Thus, it is obvious that the United States as the leader of the world community set certain standards in the field of economic policy for the civilized world. However, these standards rely primarily on the America's national law, since the closeness of the American legal system is ensured by the complicated order of the inclusion of international treaties in the system of sources of law. Hence, it follows that the model for the international law implementation, created in the USA, can be characterized as complicated and rigid. It reminds of a multi-stage system of filters, the passage through which serves as a guarantee of "rejection" of those norms of international law that contradict national law. The emergence of such a policy should be attributed to the adoption of the first American constitution, which was called "Articles of the Confederation and the Eternal Union" (1977). This normative act established that the US treasury can be replenished only through imposing the percentage duty on all goods imported into the country. This course was also followed after passing the current Constitution of the US, which reads: "Section 8. 1: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common

[17] Statement By U.S. Trade Representative Robert Lighthizer on Section 301 Action. – URL: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/state ment-us-trade-representative

Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States"[18].

The US Constitution established that the United States President is the only carrier of executive power that forms and implements the economic policy of this state. No bodies of executive power are mentioned in the US Constitution. In this country, there is no government in the proper sense of the word, but among federal executive bodies, there are structures similar in composition and functions to government-type bodies. These American institutions are united by the notion of "presidential administration", which is entrusted to deal with the organization and implementation of the state customs policy in a centralized way. In exercising his own powers, the leader of the American state issues various legal acts. These include executive orders that regulate many issues of public administration, as well as instructions, directives, rules and regulations that are applied throughout the country and contribute to the implementation of US state economic policy. Thus, the head of the state determines the main directions of economic policy, whereas four-million staff of the federal executive authorities, including customs officers, are involved in the implementation of this policy[19].

Customs authorities of the US have to perform the following tasks: 1) prohibition of the flow of illegal goods to the United States; 2) collection of customs duties; 3) regulation of the export of American goods; 4) collection of statistical data on import, etc. In addition, the continuous development of the customs service requires constant improvement of the law on its organizational and legal principles[20]. Setting the order in this area of government policy under condition of the globalization crisis became the top priority of the US state policy for D. Trump. He is a businessman who knows well enough that law-abidingness has never been the virtue of American entrepreneurs.

[18] The Constitution of the United States. The Bill of Rights & All Amendments. – URL: https://constitutionus.com

[19] Oliver W.M. The Power to Persuade: Presidential Influence over Congress on Crime Control Policy // *Criminal Justice Review*. – 2003. – N 28. – P. 113–132.

[20] U.S. Code: Title 18. – Crime and Criminal Procedure. – URL: //www/ law/cornell/edu/uscode/text/18.

President Trump remembers that the main signature under the Declaration of Independence was made by the head of the Continental Congress, the "uncrowned king of pirates and smugglers" D. Hancock (1737–1793). Throughout his life he openly violated the customs legislation not only of England, but also of independent America, proving that smuggling is the most profitable business for entrepreneurs[21]. The descendants of slave traders, pirates and smugglers of the past centuries are not able to break free from this historical experience. This was acknowledged by D. Trump and his team, who announced that they would introduce such home policy that would contribute to the elimination of customs-related crimes within the United States itself through the rapid and severe criminalization of new means of violation of customs legislation. This resulted in the beginning of the process of improving the Code of Law of the United States, which is an official generalization and codification of general and permanent federal laws, first of all, criminal ones[22].

However, the US still do not have a federal criminal code in its general sense. Under the Act of Congress of June 25, 1948, most of the previously existing legislation was revised, codified and incorporated in the form of a law in the title

18 of the US Code of Laws[23]. However, it is characteristic of the US Code of Law that the rules of criminal law that are included in it are casuistic and descriptive by nature. In addition, this book contains many outdated and even archaic criminal rules that can not contribute to the implementation of the "new state and legal policy" of D. Trump. Nevertheless, the president announced that he would resolutely act in the area of the introduction of new customs tariffs for

[21] Settel A. Pictorial History of the United States Customs Service. – N.Y.: Crown Publications, 1976. – P. 10.

[22] Уголовное законодательство зарубежных стран (Англии, США, Франции, Германии, Японии). Сборник законодательных материалов / [Текст] / [под ред. И. Д. Козочкина]. – М.: Зерцало, 1999. – 352 с.

[23] U.S. Code: Table Of Contents. Legal Information Institute. – URL: https://www.law.cornell.edu/uscode/text

US opponents and criminalization of customs crimes committed inside America itself[24].

It should be noted that Trump's legal foreign economic policy is Article 232 of the Trade Extension Act of 1962, which under certain circumstances allows the president to set custom tariffs based on the recommendation of the US Trade Secretary. This law was rarely used by Trump's predecessors, and therefore on March 22, 2018, he signed a memorandum that instructed the US Trade Representative to apply tariffs for Chinese goods worth $ 50 billion. Trump noted that the tariffs would be imposed because of the theft of intellectual property of the United States by the Chinese and announced that he planned such tariffs for import of foreign countries, which would help America return to the status of the world hegemon[25]. This course of Trump led to the announcement of the trade war to China in the official periodicals "Federal Register" and "The Code of Federal Regulations"[26]. In response, the Ministry of Commerce of the People's Republic of China announced the plans to introduce its own high tariffs for 128 US products. And this terrified American manufacturers. They appeal to the limitation of the action of the Federal criminal legislation in the event when they are forced to violate customs legislation. However, the Trump administration insists on increasing sanctions for customs and tax offenses to reduce the scope of applying the administrative sanctions and to extend the scope of applying the criminal sanctions[27].

The Government of D. Trump insists on the application of criminal penalties under the statutes, which were previously not used in judicial practice in the condemnation of people who committed

[24] Model Penal Code. The American Law Institution. 6th Annual Meeting. May 20-22, 2019. – Washington, DC/ [Text]. – URL: https://www.ali.org/ publications/show/model-penal-code/

[25] President Donald Trump Hit Chinese Smports to the US with Massive Tariffs on Thursday. – URL: https:// www.businessinsider.com/trump-tariffs-what-is-a-tariff-meaning-for-prices-consu mer-2018-3

[26] Electronic Code of Federal Regulations. – URL: http://www.ecfr. gov/cgi-bin/ECFR?page=browse.

[27] Rocha A.F. And Up to Twenty Years in Prison: The Criminalization of US Customs Violations – July 2015 [A.F. Rocha, D. Barclay, D. Bond, D. Lew, G. Spak, L. Winer]. – P. 10. – URL: https: //wwwgfintegrity.org/wp-content/ uploads/2015/ 07/Criminalization-of-US.29.

customs and tax crimes. In this case, we are talking about a conspiracy for the purpose of non-payment of customs duties (18 U.S.C § 371), laundering the money obtained as a result of committing customs crimes (18 U.S.C §§ 1956, 1957), smuggling (18 U.S.C § 545), assistance and complicity in customs-related criminal offenses (18 U.S.C § 2), mail fraud (18 U.S.C §§ 1341, 1343) and fake declarations of the goods imported into the United States (31 U.S.C §§ 3729-33)[28].

Under the new historical conditions, America is not able to take care of the global economic interests of the Western countries, and President Trump proceeds from a simple postulate: "Nothing personal, it's just business". That is why the world economic war was launched, one of the manifestations of which is the "new customs policy" of Trump. Its outcome is hard to predict, but there is no other way out for the country-leader of the world community. And this war is accompanied by radical transformations of US financial policy in order to bring them back to the position of the leader of financial market[29].

2. "New financial policy" of president Trump

It is common to call the socio-economic model of a society, which is prevalent today in most countries of the world, capitalism. The official ideological machinery of the capitalist society persuades everybody that the political system suitable for such a society is called "democracy". In fact, it is the power of the richest elite, capitalist oligarchs, for who the term "plutocracy" was introduced in the textbooks on political science[30].

---

[28] Report of the Subcommittee on Criminal Justice on Recodification of Federal Criminal Law. Subcommittee on Criminal Justice of the Committee on the Judiciary, House of Representatives. Ninety-fifth Congress, Second Session. – Wash.: U.S. Government. Print. Off., 1979. – P. 11.

[29] Brown M. The Criminalization of Import Violations by Customs Authorities. – P. 21–22. – URL: https: //www.mayerbrown.com/public_docs/07-13-11_Global Strategies-Criminalization_of_Import.pdfp.

[30] Катасонов В.Ю. Диктатура банкократии. Оргпреступность фанансово-банковского мира. Как противостоять финансовой кабале. – 2014. – URL: https://www.ozon.ru/context/detail/id/2765 5786/

According to the researchers, the plutocrats, being energetic "combiners", creators of the pyramids, the first of which was created by the founder of the first Bank of America R. Morris, put their own selfish interests in the forefront[31]. Therefore, before the beginning of the presidential term of D. Trump, the US dollar had served as currency of not only the United States, but also for the rest of the world[32]. The dollar was the dominant equivalent of exchange in cross-border operations and the most popular asset used by central banks and governments to create financial reserves. However, this currency began to lose brilliance even before the current problems with US debt arose. Its share in the global reserves of central banks has decreased from 70 % to 60 % for the last 10 years.

In the market economy, there exists the state regulation of the financial relations, which is a system of legislative, executive and supervisory measures implemented by authorized state institutions in order to stabilize the socio-economic system and its adaptation to changes in the life of the society and the state. A periodic change or correction of the mechanisms of financial regulation of the economy is associated with periodic growth of non-equilibrium, instability and uncontrollability of economic processes[33]. The role of the state as an organizing principle in the integrated process of social evolution is intensified exactly during the periods of increasing instability of the system and changing the modes of interaction between the state and the economy. This requires the prevention of the devastating consequences of these processes, which is what the team of President D. Trump is

[31] Calabria M.A. Monetary History and Policy. A Reading List [M.A. Calabria, J.A. Dorn, G. Selgin]. – URL: https://www.cato.org/research/ banking/rl-monetary-policy.html

[32] The U.S. Financial Regulatory System. – URL:https://www.cfr.org/ backgrounder/us-financial-regulatory-system

[33] Долан Э. Дж., Кэмпбелл Р. Дж. Деньги, банки и денежно-кредитная политика: [пер. с англ.]. – СПб.: АОЗТ «Литера плюс», 1994. – URL: http://www.bibliotekar.ru /bank-8/

engaged in, conducting important economic, political, social and legal reforms[34].

The real political and legal life demonstrates the inextricable link between financial relations and politics, which requires an active financial and legal policy as an optimal model of their interaction. American lawyers are convinced that the Great Depression should be considered a large laboratory to study this phenomenon (1929–1938), because it was then that financial and legal policies served the interests of constantly changing political forces, rather than all the people[35]. This is clearly traced in subjectivity and the desire of political forces to satisfy the interests of individual regions or power structures[36].

The state financial activities of the administration involve the performance of its functions for the systematic development, distribution and the use of financial resources for the purposes of economic and social development and strengthening defense and security of countries[37]. The main organizational and legal peculiarities of financial activity are: 1) it differs from other spheres of the state activity by inter-sectoral content, since the accumulation and distribution of financial resources affects all authorities and administrations, as well as corporations, organizations and institutions involved in their implementation; 2) budget funds for the main spheres of life of the state or entities of the American federation are distributed by the representative bodies; 3) The scope of financial

[34] What Impact Does Government Regulation Have on the Financial Services sector? Updated Feb 5, 2018. – URL: https://www. investopedia.com/ask/answers/030315/what-impact-does-government-regulation-have-financial-services-sector.asp\

[35] Wildavsky A. The Politics of the Budgetary Process. – Boston; Toronto: Little Brown Co., 1964. – P. VI–VII.

[36] Glaeser E.L., Goldin C.D. Corruption and Reform: Lessons from America's Economic History. – Chicago: University of Chicago Press. – URL: http://bookre.org/reader?file=711219

[37] GC18/1: Proposed Guidance on Financial Crime Systems and Controls: Insider Dealing and Market Manipulation. Guidance consultations. First published: 27/03/2018. Last updated: 27/03/2018. – URL: https://www.fca.org.uk/publications/guidance-consultations/gc18-1-proposed-guidance-financial-crime-systems-and-controls-insider-dealing

activity refers to the behavior of both federal bodies and entities of the American federation and local self-governing bodies[38].

The specific feature of the US institutional policy arranging the activities related to the maximum possible decentralization of the banking system, which led to the fact that the US, does not actually have a central bank in its traditional sense. Its functions were shared by the Treasury (issuance of treasury bills) and the Council of Governing FRS, which interacts with those state banks that perform the functions of the central bank for the entities of the American federation.

In accordance with the law on the FRS, the central bank should ensure maximum employment, price stability and moderate long-term interest rates on loans in the United States, but specific figures in the legislation are not written and given to the discretion of its management. A similar integrated mandate distinguishes the Federal Reserve from central banks of other developed countries, whose task is usually to maintain stable prices. The FRS mission is complicated by the need to take care of economic growth, which is associated with low unemployment and low loan rates. The complexity of this mission urges the American central bank to keep a more active position when implementing the monetary policy[39].

The Fed traditionally relied on three tools of the monetary policy: 1. The main tool of the Fed policy is opening market operations on sale or purchase of US securities. 2. The Fed may also change the reserve requirements, which indicate what part of clients' deposits (primarily check accounts) should be kept by banks as cash in a repository or as a deposit at the Fed. 3. Finally, the Fed can change the two interest rates it controls directly, and these interest rates affect market rates – the rate it pays to borrowers and the rate it pays to depositors.

[38] Federal Policy on Financial Regulation, 2017-2020. – URL: https: // ballotpedia.org/Federal_ policy_on_financial_regulation,_2017-2020

[39] Federal Reserve Act. Section 2 A: Monetary policy objectives // *The Board of Governors of the Federal Reserve System: website*. 2013. – May 23. – URL: http://www.federal reserve.gov/aboutthefed/section2a.htm.

Politics, of course, is one of the most powerful restrictions on the Fed, and in the current political climate, monetary policy undoubtedly sees the reasons for weakening the negotiations on the bank powers. However, the hawks and other critics of the current Fed seem to be very skilled in using the bank as the political law, without paying particular attention to the details, as the precise scope of the Fed's powers is related to buying assets.

The basis of the financial policy of the US government is financial law as a set of rules that help to resolve conflicts in the financial sector or to establish new rules of behavior of financial entities[40]. All the laws in the United States are arranged in a certain hierarchy, and this system has its own financial law – an independent branch of public law, which contains a set of legal rules governing the social relations that arise in the process of creating, distributing and using financial resources of the state and self-government. Material and procedural norms in the institutions of financial law exist in a certain unity and close interconnection.

It should be noted that the state law, intended for legal regulation of financial relations, is multi-faceted. Such semi-state organizations as the American Law Institute (ALI) and the Uniform Law Commission (ULC) took care of it, trying to coordinate national laws on the legal regulation of financial relations through standard financial laws. However, their attempts appeared to be unsuccessful, and for the harmonization of the federal financial legislation and financial laws of particular states, the judicial interpretation of the "difference" was stipulated by US case law.

In any case, financial and legal policy is a means of control over state finances with the view to strengthening the political power. The fundamentals of the financial policy of the US government are financial law as a set of rules that help to resolve conflicts in the

[40] A Financial System That Creates Economic Opportunities. Banks and Credit Unions. U.S. Department of the Treasury. Report to President Donald J. Trump. Executive Order 13772 on Core Principles for Regulating the United States Financial System. June 2017. – URL: https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf Financial

financial sector or to establish new rules of the behavior of financial entities.

Statutory acts adopted by federal agencies in accordance with the "Law on the Improvement of the Administration of Justice by Establishing an Accountable Administrative Procedure" (1946) have legal force, but they must comply with the Constitution and statutory law[41].

Market economy requires a periodic change or correction of the mechanisms of financial regulation of the economy, associated with the growth of non-equilibrium, instability, and uncontrollability of economic processes. The role of the state as an organizing principle in the complex process of social evolution is intensified exctly during the periods of increasing instability of the system and a change the modes of interaction between the state and the economy. This requires prevention of the devastating consequences of these processes, which is what President D. Trump's team is engaged in, implementing important economic, political, social and legal reforms.

Thus, under modern conditions, the United States is a locomotive of the world economy and their policy in the field of monetary regulation and credit has a serious impact on the global economy. Trump repeatedly argued that he was in favor of the monetary policy that is currently under control of J. Powell, an American lawyer, Chairman of the Governing Board, who was nominated by the US president on November 2, 2017 and approved by the Senate vote on January 23, 2018. In other times, Trump declared that the Fed created a very unsteady economy and that interest rates should be changed. Trump considers that the way out of this situation is an impossible under any circumstances return to the gold standard, saying:

[41] Law on the Improvement of the Administration of Justice by Establishing an Accountable Administrative Procedure (1946). – URL: http://static1.1.sqspcdn.com/static/f/276323/26217983/1431377158130/v86_i1_felter.pdf?token=%2B8c3DRu2JzZAzXCD5tpWAa9l%2B2Q%3D

"It would be very difficult to make the gold standard again, but that would be great. We would have a standard to base our money on"[42].

CONCLUSIONS

It is obvious that the actions of the White House head in the international arena are governed by internal political calculations, and not by considerations peculiar to political realism. And although the 45th head of the United States professes certain principles that bring him closer to realists, but this is more a matter of purely theoretical ideas.

Many of the positions of Trump's economic program, which contradict the fundamentals of globalization, are contradictory. Some of them are just hard to do. Indeed, the basis of globalization lies in quite objective reasons: it is impossible to cancel the internationalization and transnationalization of production by any decrees and privileges. In a market economy, capital goes where the norm or mass of profit is higher.

All this occurs in the conditions of the sharpest political struggle. Obviously, Trump is not accepted, and it is not known whether the US political class will accept it as the country's leader. The deep contradictions of his economic policy are sometimes not even discussed against the background of endless mutual recriminations and accusations. There is a political crisis, which is not the best condition for the implementation of economic plans and reforms

Among American voters, the reform of financial regulation remains extremely popular. However, the state policy pendulum changes direction in the direction of deregulating the financial sector. Nevertheless, a full return to the pre-crisis level of regulation is not expected, as the Republicans are aware of the cyclical nature of financial and economic development. Trump's policy e shows that the United States is not going to cede leadership positions in international financial regulation.

[42] Groppe M. President Trump's Budget Reveals His Major Priorities: Here are the Highlights. – 2017. – URL: https://www.usatoday.com/story/news/politics/2017/05/23president-trump-budget-reveals-his-major-priorities/102058 690/

Finally, it can be concluded that D. Trump's controversial state-law policy in the foreign arena and within his own country is a necessary but correct answer to the problems that have arisen in connection with the globalization crisis.

SUMMARY

The given article deals with specific features of state formation and legal policy of president D. Trump. Main features of D. Trump's foreign policy are analyzed. The specific attention to the international legal traditions in the area of defending human rights and freedoms is constantly heated by the resolutions of the Supreme Court of the USA are paid. Legal principles of economic policy of D. Trump are investigated. "New financial policy" of president Trump is developed. The main organizational and legal peculiarities of financial activity are discovered. Among them the following: 1) it differs from other spheres of the state activity by inter-sectoral content, since the accumulation and distribution of financial resources affects all authorities and administrations, as well as corporations, organizations and institutions involved in their implementation; 2) budget funds for the main spheres of life of the state or entities of the American federation are distributed by the representative bodies; 3) The scope of financial activity refers to the behavior of both federal bodies and entities of the American federation and local self-governing bodies.

REFERENCES

1. Foundations of Colonial America; a Documentary History : in 3 vols. / ed. by W. K. Kavenagh. – N. Y.: Chelsea House Publishers, 1973. – Vol. 1. – P. 45–49.

2. Schlesinger A.M. The Cycles of American History. – N.Y.: Houghton Mifflin Harcourt, 1999. – P. 34.

3. Hartz L. The Liberal Tradition in America. – Eugene; Oregon: Harvest Books, 1991. – P. 5.

4. American Philosophical Society, Library. Weedon George Henry (1730–1790), General Military Correspondence and Other Materials. – № 131, 139.

5. Universal Declaration of Human Rights. United Nations // URL: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

6. Glendon M.A. A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights. – N.Y.: Random House Trade Paperbacks, 2001. – P. 4–5.

7. Stacy L., Gardiner Ch.L. Criminal Justice Policy. – 2013 / [Text]. – URL: https://play.google.com/store/books/details/Stacy_L_Mallicoat_Criminal_Justice_Policy?id=nhlzAwAAQBAJ

8. The Judiciary Act of 1789. – URL: http: //www.constitution.org/uslaw/judiciary_1789.htm

9. Human Rights. – URL: https: // www.state.gov/j/drl/hr/

10. Human Rights and United States Law. – URL: http:// www.theadvocatesforhumanrights.org/human_rights_and_the_united_states

11. U.S. Withdraws from U.N. Human Rights Council Over Perceived Bias Against Israel. – URL: https://www.washingtonpost.com/world/national-security/us-expected-to-back-away-from-un-human-rights-council/2018/06/19/ a49c2d0c-733c-11e8-b4b7-308400242c2e_story. html?utm_term=.358873b15730

12. American Philosophical Society, Library. Calendar of the Papers of Benjamin Franklin. – Vol. 1. – Film 54. – Reel 43, 107, 113; American Philosophical Society, Library. Presidential Papers Microfilms. Thomas Jefferson Papers. Jeneral Correspondence, 1761–1826. Account Books for the Years 1767–1770. Reel 58, Serie 4; Reel 59, Serie 4–5; Reel 60, Serie 11–12.

13. NCAI Denounces President Trump’s Invoking of Wounded Knee Massacre and Battle of Little Bighorn in Political Attack. – URL. – Режим доступу: http://www.ncai.org/news/articles/2019/01/14/ncai-denounces-president-trump-s-invoking-of-wounded-knee-massacre-and-battle-of-little-bighorn-in-political-attack

14. Duignan B. Donald Trump President of the United States. – URL: https://www.britannica.com/ biography/Donald-Trump

15. Калашников В. М., Малишко В.М. Формування інститутів держави і права в США ранньої доби (1607-1775 роки). Монографія. – К.: Логос, 2015. – С. 9.

16. Кущ О. Проблемы индейцев шерифа не волнуют: Зачем США вводят пошлины против таких стран, как Украина. – URL: https:// 112.ua/ mnenie/problemy-indeycev-sherifa-ne-volnuyut-zachem-ssha-vvodyat-poshliny-protiv-takih-stran-kak-ukraina-444994.html

17. Statement By U.S. Trade Representative Robert Lighthizer on Section 301 Action. – URL: https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/ august/state ment-us-trade-representative

18. The Constitution of the United States. The Bill of Rights & All Amendments. – URL: https://constitutionus.com

19. Oliver W.M. The Power to Persuade: Presidential Influence over Congress on Crime Control Policy // *Criminal Justice Review*. – 2003. – N 28. – P. 113–132.

20. U.S. Code: Title 18. – Crime and Criminal Procedure. – URL: //www/ law/cornell/edu/uscode/text/18.

21. Settel A. Pictorial History of the United States Customs Service. – N.Y.: Crown Publications, 1976. – P. 10.

22. Уголовное законодательство зарубежных стран (Англии, США, Франции, Германии, Японии). Сборник законодательных материалов / [Текст] / [под ред. И. Д. Козочкина]. – М.: Зерцало, 1999. – 352 с.

23. U.S. Code: Table Of Contents. Legal Information Institute. – URL: https://www.law.cornell.edu/uscode/text

24. Model Penal Code. The American Law Institution. 6th Annual Meeting. May 20-22, 2019. – Washington, DC/ [Text]. – URL: https://www.ali.org/ publications/show/model-penal-code/

25. President Donald Trump Hit Chinese Smports to the US with Massive Tariffs on Thursday. – URL: https:// www.businessinsider.com/trump-tariffs-what-is-a-tariff-meaning-for-prices-consu mer-2018-3.

26. Electronic Code of Federal Regulations. – URL: http://www.ecfr. gov/cgi-bin/ECFR?page=browse.

27. Rocha A.F. And Up to Twenty Years in Prison: The Criminalization of US Customs Violations – July 2015 [A.F. Rocha, D. Barclay, D. Bond, D. Lew, G. Spak, L. Winer]. – P. 10. –

URL: https: //wwwgfintegrity.org/wp-content/uploads/2015/07/ Criminalization-of-US.29.

28. Report of the Subcommittee on Criminal Justice on Recodification of Federal Criminal Law. Subcommittee on Criminal Justice of the Committee on the Judiciary, House of Representatives. Ninety-fifth Congress, Second Session. – Wash.: U.S. Government. Print. Off., 1979. – P. 11.

29. Brown M. The Criminalization of Import Violations by Customs Authorities. – P. 21-22. – URL: https: //www.mayerbrown.com/public_docs/07-13-11_GlobalStrategies-Criminalization_of_Import.pdfp.

30. Катасонов В.Ю. Диктатура банкократии. Оргпреступность фанансово-банковского мира. Как противостоять финансовой кабале. –2014. – URL: https://www.ozon.ru/context/detail/id/27655786/

31. Calabria M.A. Monetary History and Policy. A Reading List [M.A. Calabria, J.A. Dorn, G. Selgin]. – URL: https://www.cato.org/research/banking/rl-monetary-policy.html

32. The U.S. Financial Regulatory System. – URL:https://www.cfr.org/backgrounder/us-financial-regulatory-system

33. Долан Э. Дж., Кэмпбелл Р. Дж. Деньги, банки и денежно-кредитная политика: [пер. с англ.]. – СПб.: АОЗТ «Литера плюс», 1994. – URL: http://www.bibliotekar.ru /bank-8/

34. What Impact Does Government Regulation Have on the Financial Services sector? Updated Feb 5, 2018. – URL: https://www.investopedia.com/ask/answers/030315/what-impact-does-government-regulation-have-financial-services-sector.asp\

35. Wildavsky A. The Politics of the Budgetary Process. – Boston; Toronto: Little Brown Co., 1964. – P. VI-VII.

36. Glaeser E.L., Goldin C.D. Corruption and Reform: Lessons from America’s Economic History. – Chicago: University of Chicago Press. – URL: http://bookre.org/reader?file=711219

37. GC18/1: Proposed Guidance on Financial Crime Systems and Controls: Insider Dealing and Market Manipulation. Guidance consultations. First published: 27/03/2018. Last updated:

27/03/2018.– URL: https://www.fca.org.uk/ publications/guidance-consultations/gc18-1-proposed- guidance-financial-crime-systems-and-controls-insider-dealing

38. Federal Policy on Financial Regulation, 2017-2020. – URL: https: // ballotpedia.org/Federal_policy_on_financial_ regulation,_2017-2020

39. Federal Reserve Act. Section 2 A: Monetary policy // *The Board of Governors of the Federal Reserve System: website*. 2013. – May 23. – URL: http://www.federal reserve.gov/aboutthefed/ section2a.htm.

40. A Financial System That Creates Economic Opportunities. Banks and Credit Unions. U.S. Department of the Treasury. Report to President Donald J. Trump. Executive Order 13772 on Core Principles for Regulating the United States Financial System. June 2017. – URL: https://www.treasury.gov/press-center/press-releases/ Documents/A%20Financial%20System.pdf Financial

41. Law on the Improvement of the Administration of Justice by Establishing an Accountable Administrative Procedure (1946). – URL: http:// static1.1.sqspcdn.com/static/f/276323/26217983/ 1431377158130/v86_i1_felter.pdf?token=%2B8c3DRu2JzZAz XCD5tpWAa9l%2B2Q%3D

42. Groppe M. President Trump's Budget Reveals His Major Priorities: Here are the Highlights. – 2017. – URL: https://www.usatoday.com/story/news/ politics/2017/05/23president-trump-budget-reveals-his-major-priorities/102058 690/

Information about the author:
Kalashnikov V. M.,
Ph.D., Doctor of Historical Sciences, Professor,
Professor of the Theory of State and Law, Constitutional Law and State Government Department
Oles Honchar Dnipro National University
72, Haharin av., Dnipro, Ukraine

DOI https://doi.org/10.36059/978-966-397-207-7/57-75

DRUG CRIME REDUCTIOM FROM THE VICTIM POSITION

Klymiuk I. N.

INTRODUCTION

In the system of measures to ensure the criminological safety of society, the fight against crime in the sphere of illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors occupies an important place. The issue under investigation has been a problem for many centuries and has become increasingly relevant lately. The paper proposes an approach to reducing the level of narcotic crime from the point of view of victimology.

Narcotic victimization is a person's inclination, under favorable circumstances, to become a victim of a crime, including the sale or use of drugs. Given that victimization is a process of transforming potential victims into victims of crime, individuals are subconsciously endowed with internal victimization.

Schematically, victimization can be divided into several steps:

1. Occurrence of victimization;
2. Creation of a criminal situation;
3. Realization of victimization by criminal assault;
4. Post-criminal behavior of victims of crime.

1. Mechanism of criminal behavior of the addict

The crime is committed as a result of certain patterns. They are quite different for each crime, so it is necessary to take into account the circumstances that led to his commission, the criminal's external environment, his personal qualities and beliefs, education, education and even religion. Recognizing the influence of individual factors of the social environment, psychological substructures of the individual, his motivational sphere, they are dynamically transformed and affect other elements of the mechanism of individual criminal behavior.

Since crime as a result is a form of interaction between the individual and the environment, the stages that serve to shape

criminal behavior must be considered against the background of social reality.

The mechanism of criminal behavior is as follows:

1) formation of personality with antisocial orientation;

2) motivation for antisocial behavior (motivational stage);

3) making a specific decision on its implementation (the stage of design);

4) implementation of the decision;

5) post-criminal behavior[1].

The appropriate behavior of a person at each stage is the result of the interaction of the environment and the person committing the crime.

At each of the stages of interaction of the person with the environment is different, the subject may be more or less active, and at the last stage he becomes the most active: it can affect social reality in a negative direction, which as a consequence causes appropriate sanctions from the party society (deprivation of liberty or other punishment). There are also different timelines for the stages of criminal behavior: antisocial orientation can take a long time, while motivation and decision-making may take days or hours, and implementation may take several minutes.

The above scheme is rather conditional because, for example, the decision-making stage may be completely absent (negligent crime) or last for years or within seconds (a crime of physiological affect).

From a psychological point of view, a person actively acts only on what is of value to him. But the values of the offender are individual, they do not coincide with the conventional and have not a positive but a socially negative orientation. Thus, the social danger of the offender is determined not by some of his special needs and values, but by his rejection of the system of already existing social values.

Motivation to commit a crime is an internal motivation, the driving force behind the commission of a criminal act.

The motives can be quite different: low (for example, self-interest, revenge, hooliganism); those that are not of a low nature (for

[1] Бажанов М.І., Баулін Ю.В., Борисов В.І. Кримінальне право України: Загальна частина: Підручник / За ред. проф. М.І. Бажанова, В.В. Сташиса, В.Я. Тація. – 2-е вид., перероб. і допов. – Київ : Юрінком Інтер, 2005. – С. 162.

example, pity, sympathy, the desire to help another person)[2]. Motives can also be attributed to a person's conscious needs (food, clothing, shelter, communication, acquaintance, leisure), both real and imagined, that drive her to act. Behavior motives are determined by feelings, needs, interests that arose and sharpened under the influence of the environment and in a particular situation.

Analyzing the aforesaid it is possible to identify the following motives for crimes in the field of drug trafficking in psychotropic substances:

1. Organic motive – the thirst for the body to take a drug (addiction);

2. Self-interest – lack of funds, confidence in the need to improve living standards.

When deciding to commit a crime, the occurrence of possible consequences is forecasted, taking into account the real situation, own capabilities and other circumstances. After the person under the influence of the situation and the existing needs, interests, feelings, there is a setup for certain behavior, there is some delay. As a rule, a person does not act immediately in accordance with this setting, but relates it to existing in the society of moral, legal and other norms, with public and group opinion, with the opinion of relatives. Objective factors, such as the state of external social control, are taken into account. It also takes into account the practice of detecting, ending a crime, punishing perpetrators. In doing so, the possible benefits and losses are weighed. At this stage, the characteristics of the consciousness of the individual, as well as of the persons and groups in contact with whom the person is or is oriented, become essential. If the decision is delayed, there may be a refusal to commit a crime, for example as a result of the awareness that such crimes are usually disclosed and the perpetrators are held to strict liability. If a person does not refuse the decision to break the law, he chooses the means of achievement of the goal, which seem to him in the appropriate situation most appropriate, taking into account his own capabilities and the capabilities of accomplices.

---

[2] Бажанов М.І., Баулін Ю.В., Борисов В.І. Кримінальне право України: Загальна частина: Підручник / За ред. проф. М.І. Бажанова, В.В. Сташиса, В.Я. Тація. – 2-е вид., перероб. і допов. – Київ : Юрінком Інтер, 2005. – С. 167.

Based on the nature of the «narcotic» crimes, the decision-making stage is quite important. As an example, consider Article 305 of the Criminal Code of Ukraine – smuggling of narcotic drugs, psychotropic substances, their analogs or precursors or counterfeit medicines. While moving illicit substances across the customs border of Ukraine, a person may be guided by his or her own beliefs, for example, when transporting the drugs he / she uses; or have incited him to do so, and he is acting as the executor, although in reality he can only be an accomplice, assisting in the commission of a crime by carriage; or he may not be aware of the contents of the luggage he is carrying. When deciding on drug smuggling at the suggestion of the customer, the person must know what is being transported, then he or she will be able to weigh all the advantages and disadvantages of the act and agree, or refuse, but the responsibility for committing the crime comes regardless of the carrier's awareness of the baggage content.

At the stage of realization of the intent is the execution of the planned crime. The peculiarity of the execution is the interaction of accomplices among themselves, between the offender and his victim, between the offender and third parties (witnesses and eyewitnesses). The actual implementation of the solution may differ from the one planned, for example, when the external situation changes. It is important to find out why the decision was made to choose the most criminal behavior. After all, motive and purpose in themselves may not be anti-social in nature, but criminal behavior can make the chosen means of achieving the goal.

That is, at this stage, the most important thing is the commission of a direct crime. Understanding the mechanism of crime is an important element in preventing criminal acts, since knowing the problem from the inside is easier to solve. It is possible to distinguish the following causal links (stages of commission) of crimes of this subgroup: preparation; implementation; concealment.

A clearly depicted model of the crime practically coincides with the mechanism of criminal behavior of the person, but is more narrowed. Based on the situation, it is logical to design and model of search for drugs, psychotropic substances, their analogues and precursors. On the objective side, in order to find «narcotic

substances» you need to know them: storage method; method of sale; way of hiding.

At the stage of post-criminal behavior, the perpetrator analyzes what has happened, the consequences that have occurred, hides the traces of the crime, disposes of the acquired property, takes measures to legalize (launder) the property, as well as to avoid criminal liability and punishment (threats, elimination bribery of law enforcement or control officers).

All this corresponds to the norms of morality, law, public opinion, group assessments. The person can either repent of the committed or develop a system of protection against exposure. For example, she may claim that the drugs were tossed, that they were not him (or her), or had just been found by a person on the road, and were immediately seized by law enforcement officers.

Thus, the mechanism of criminal behavior is the process of interaction between the individual and the environment during which intent is created, planned and committed. The mechanism of criminal behavior reveals its structural elements and their interaction in dynamics. It can help to consider the chain of development of criminal behavior: the interaction of causes and conditions that give rise to the motive and intent to commit the crime, deciding and planning the assault, the specific life situation and behavior of the victim, the execution of the planned crime and its consequences.

In order to combat drug crime, it is advisable to carry out victim-modeling using existing criminal cases as a model, based on the information recorded in the register of judicial decisions of Ukraine. According to which, «person 1» came from Izmail to Odessa and in the morning purchased a large batch of cannabis at the train station, after which he was detained by law enforcement. On interrogation, "person 1" confessed to the crime, claiming that he had purchased the drug solely for his own use and in small quantities[3].

In order to determine what liability to apply to a particular case (administrative or criminal liability), it is necessary to establish the amount of drugs and psychotropic substances. This can be done by

[3] Офіційний сайт Реєстр судових рішень. Справа № 500/4294/14-к. [Електронний ресурс]: Режим доступу: http://www.reyestr.court.gov.ua/Review/42858627.

examining tables of small, large and particularly large quantities of narcotic drugs, psychotropic substances and precursors that are in illicit use[4].

The law provides for administrative liability for a given subset of crimes, namely, for the illicit manufacture, purchase, storage, transportation, transfer of narcotic drugs or psychotropic substances without the purpose of small-scale sales[5]. For example, according to the table, small size is considered: up to 5.0g of cannabis, cannabis resin; up to 0.3 g of cannabis extract (tincture) – a remedy obtained from any kind and variety of cannabis or cannabis by extraction in various ways and containing tetrahydrocannabinol; up to 0.005g of heroin; up to 0.005g acetylated opium – a means containing; acetylated derivatives of opium alkaloids (including other substances); up to 0.2g of codeine; up to 0.02g of cocaine; to 0.03 g of morphine; up to 0.1g of opium[6].

That is, if these or similar narcotic substances are discovered, their illicit manufacture, purchase, storage, transportation, shipment without the purpose of sale – entail a fine of twenty-five to fifty tax-free minimum incomes or community service for a term from twenty to sixty hours, or administrative arrest for up to fifteen days. In addition, a person who voluntarily surrendered narcotic drugs or psychotropic substances that were small in size and manufactured, manufactured, purchased, stored, transported, forwarded without the

[4] Невеликі, великі та особливо великі розміри наркотичних засобів, що знаходяться у незаконному обігу/Таблиця 1/ Затверджена наказом Міністерства охорони здоров'я України 01.08.2000 N 188 (у редакції 19.06.2015): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua /laws/show/z0512-00.

[5] Кодекс України про адміністративні правопорушення (статті 1 – 212-21) від 07.12.1984 № 8073-X (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/80731-10.

[6] Невеликі, великі та особливо великі розміри наркотичних засобів, що знаходяться у незаконному обігу/Таблиця 1/ Затверджена наказом Міністерства охорони здоров'я України 01.08.2000 N 188 (у редакції 19.06.2015): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/ z0512-00.

purpose of sale, shall be exempt from administrative responsibility for actions[7].

However, if the same narcotics are larger, then criminal liability under the Criminal Code of Ukraine (Section XIII) applies. An examination of narcotic drugs or psychotropic substances should be conducted to provide accurate information on the size of the materials being tested. If the size of the cannabis is small, such as 3g, then administrative liability is applicable. If 5g or more – criminal.

In this case, the preparation for committing a crime (moving to another city) for the purchase of drugs is clearly traced; it is a completed crime because the drug is purchased. The purpose – to get pleasure from drug intoxication, direct intent. Actions of «person 1» can be qualified under part 1 of Article 309 of the Criminal Code of Ukraine – illegal production, manufacture, purchase, storage, transportation or transfer of narcotic drugs, psychotropic substances or their analogues without the purpose of sale. Liability for which is a fine of fifty to one hundred tax-free minimum incomes, or correctional labor for a term up to two years, or arrest for up to six months, imprisonment for a term up to three years, or imprisonment for the same term[8].

However, when determining a sentence, the court also takes into account factors that may contribute to the aggravation or mitigation of the sentence. One of the mitigating circumstances explicitly stated in part 4 of Article 309 of the Criminal Code of Ukraine – voluntary referral to a medical institution and the commencement of treatment for drug addiction, releases from criminal liability. Also mitigating circumstances include: committing a crime to a minor, committing it for the first time, taking into account the scale of the acts committed, the consequences they led to and the size of the drugs; committing a crime as a result of grave personal family circumstances, committing under the influence of coercion, threats, or through material or

[7] Кодекс України про адміністративні правопорушення (статті 1 – 212-21) від 07.12.1984 № 8073-X (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/80731-10. – Ст. 44.

[8] Кримінальний кодекс України від 05.04.2001 № 2341-III (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/2341-14. – Ст. 309.

official dependence, etc. The aggravating circumstances are referred to in paragraph 2 of Article 309 of the Criminal Code of Ukraine – the commission of a crime again or by prior conspiracy by a group of persons or a person who has previously committed one of the crimes provided for by Articles 307, 308, 310, 317 of the Criminal Code of Ukraine[9], or if the subject matter such actions were narcotics, psychotropic substances or their analogues in large sizes; and in accordance with Article 309 (3) of the Criminal Code of Ukraine – committing with the involvement of a minor, as well as if the object of such acts were narcotic drugs, psychotropic substances or their analogues of particularly large size.

In addition, to determine the true intent of the suspect, it is necessary to conduct interrogation of persons from his immediate environment. They can provide important information for a quality case study and, as a consequence, for a speedy solution. It may be possible to obtain information about the purchase of drugs by a person in the past or their distribution to a suspect; schemes for obtaining and selling drugs; persons involved in committing the crime (organizer, executor, guide, instigator), etc.

All these circumstances will enable the investigator to investigate the crime in a quality manner and to establish justice. Scientists, on the basis of the investigated aspects, – to develop a homogeneous model of behavior of criminals in the sphere of drug business development and to develop effective methods for reducing the criminogenic situation in Ukraine. Provide assistance to drug addicts; to overcome organized crime in the sphere of drug and psychotropic substances, their analogues and precursors. To find effective methods to prevent potential victims from falling into such situations and, in view of the particular nature of the crime, not to become criminals.

In the present case, Person 1 is both a thief and a victim of drugs. In addition, other criminals are appearing – persons who have sold him drugs whose actions can be qualified under Article 306 of the Criminal Code of Ukraine, 307, 311, etc., of course, proving their guilt.

---

[9] Кримінальний кодекс України від 05.04.2001 № 2341-III (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/2341-14. – Ст. 309.

In addition, one should not forget about patrolmen, how they "could" throw narcotic substances to "person 1"; about rail security that could know about business on the railroad and above standing. The profits from the drug business are enormous! Some criminal groups can be headed even by board members, not to mention medical personnel, the military, which is now particularly prevalent.

Knowing the existence of "points" of sale of drugs, it is necessary to report it to law enforcement agencies. try not to fall within the scope of their activities. There is a need to increase control over the stations: road, rail, river and seaports. Conduct patrols with specially trained dogs and involve the latest developments in science and technology. Because if the drug dealer was detained by the police before he sold them, then the person who bought them would not be able to buy the cannabis, that is, the crime could not have happened.

Under the circumstances of the second case, "Person 2" purchased amphetamine and successfully sold it at a school site (two cases are known), after which he was detained by police. Person 2 is a drug addict and has chronic hepatitis and HIV infection[10].

In this case, several persons are victims at the same time: "Person 2" – a drug addict who bought and started selling drugs, two people to whom he sold them, and students attending the school. Probably «itself 2» was engaged in similar "sales" not the first time, and, most likely, has more than one «point of sale». Due to the fact that he himself is ill with drug addiction, so he uses drugs, he can be traced to a larger thief. "Person 2" needs to help reduce the suffering of drug addiction, "cover up" his business, having previously learned about customers. Criminal offenses are more socially dangerous when it comes to the distribution of narcotic and psychotropic substances in public places. Especially in the school district, where many kids, young people who are interested in everything around, try to seem "cooler" from each other, especially during adolescence.

We model the situation. "Person 2" approached "Person 3" (Grade 10 student) and purchased amphetamine, after which "Person 3" treated his friend "Person 4" and they later began to buy

[10] Офіційний сайт Реєстр судових рішень. Справа № 486/1038/15-к. [Електронний ресурс]: Режим доступу: http://reyestr.court.gov.ua/Review/54746382.

“Person 2” drugs to order. Due to the fact that “person 3” and “person 4” are students, and they do not have much money, they start selling drugs at a higher price themselves. In cases where they are not bought, they demand money from smaller, weaker students or steal from their parents and neighbors.

In order to prevent the development of this situation, it is necessary to strengthen the control over the school districts, since the responsibility for the children lies with the teachers. If the school district is fenced off and a guard is put in place, the “person 2” distributor will not be able to penetrate the school grounds, so the students will have less chance of access to drugs, therefore the drugs will cease to be distributed.

2. Elements of crime in the sphere of drug and psychotropic substances circulation, their analogues and precursors through the prism of victimization

The object of victimization is the public relations of which persons, goods, rights, interests and interests of which are threatened by criminal acts, are involved. These are the so-called potential victims, whose scope is defined by the sphere of criminal protection[11]. The object of crimes in the sphere of trafficking in narcotic drugs and psychotropic substances, their analogues and precursors is the legal regime for the circulation of narcotic drugs, psychotropic substances and precursors[12]. A specific crime group is characterized by an additional object. Thus, theft of narcotics or psychotropic substances[13] (Article 308 of the Criminal Code), along with health, damage to property relations, and in the case of unlawful issuance of a prescription for the right to purchase drugs or

[11] Сайт Укрінформ. [Електронний ресурс]: Режим доступу: http://www.ukrinform.ua/ukr/news/urugvay_legalizuvav_marihuanu_1895217.

[12] Науково-практичний коментар до Кримінального Кодексу України [Електронний ресурс]. – Режим доступу: http://pravoznavec.com.ua /books/162/28#chlist

[13] Кримінальний кодекс України від 05.04.2001 № 2341-III (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/ laws/show/2341-14. – Ст. 308.

psychotropic substances[14] (Article 319 of the Criminal Code), the normal activity of the respective institutions. Property relations and the normal activities of businesses and institutions in such cases act as additional objects of encroachment.

The vast majority of crimes in this category require the identification of the subject of the attack. Most items related to illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors are listed in Tables I-IV[15]. The subject of this type of crime are drugs, psychotropic substances and their analogues. The rules of Art. 1 of the Law of Ukraine "On Narcotic Drugs, Psychotropic Substances and Precursors[16]" provides definitions of these concepts.

The objective side of victimization includes the situation in which the attack occurred (location, time, method of harm), as well as the victim's behavior[17].

The objective side is characterized by acts in the form of active actions: abduction, misappropriation, extortion of narcotic drugs, psychotropic substances or their analogues or seizure of them by fraud or abuse of office (Article 308 of the Criminal Code); illegal production, manufacture, purchase, storage, transportation, transfer (Article 309 of the Criminal Code), inclination to use drugs, psychotropic substances or their analogues (Article 315KK); encouragement of minors to use doping (Article 323 of the Criminal Code). Such crimes as violations of the established rules of circulation of narcotic drugs, psychotropic substances, their analogs or precursors (Article 320 of the Criminal Code), violations of

[14] Кримінальний кодекс України від 05.04.2001 № 2341-III (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/2341-14. – Ст. 319.

[15] Невеликі, великі та особливо великі розміри наркотичних засобів, що знаходяться у незаконному обігу/Таблиця 1/ Затверджена наказом Міністерства охорони здоров'я України 01.08.2000 N 188 (у редакції 19.06.2015): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/z0512-00.

[16] Закон України « Про наркотичні засоби, психотропні речовини і прекурсори» від 15.02.1995 № 60/95-ВР (у редакції 28.12.2015): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/60/95-вр. – Ст. 1.

[17] Ривман Д.В. Криминальная віктимологія : учеб. / Д. В. Ривман. – СПб. : Питер, 2002. – С. 82.

sanitary rules and norms for the prevention of infectious diseases and mass poisoning (Article 325 of the Criminal Code), as well as violations of the rules of treatment of microbiologists other biological agents or toxins (Art. 326 of the Criminal Code) may be committed both through action and inaction[18,19].

Pursuant to paragraph 3 of the Resolution of the Plenum of the Supreme Court of Ukraine "On case-law on drug offenses, psychotropic substances, their analogues or precursors"[20] under the illicit manufacture of narcotic drugs and (or) psychotropic substances all actions related to with the serial production of narcotic drugs, psychotropic substances from chemicals and (or) plants, including the separation of parts of plants or narcotic drugs, psychotropic substances from the plants from which they are obtained, carried out against the mouth new law. The serial production of narcotic drugs, psychotropic substances from chemicals and (or) plants should be understood as a production process aimed at obtaining batches of narcotic drugs, psychotropic substances according to the relevant technology, standard, model.

Illegal production of narcotic drugs, psychotropic substances are all actions taken contrary to the procedure established by law, which result in the preparation and use of a form of narcotic drugs, psychotropic substances on the basis of narcotic drugs, psychotropic substances, drug precursors and psychotropic substances. or medicines containing them, or other narcotic drugs, psychotropic substances.

The illicit manufacture of precursors should be understood as the process of obtaining them from the appropriate raw material by any

[18] Кримінальний кодекс України від 05.04.2001 № 2341-III (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/2341-14. – Ст. 308, 309, 315, 323, 320, 325, 326.

[19] Науково-практичний коментар до Кримінального Кодексу України [Електронний ресурс]. – Режим доступу: http://pravoznavec.com.ua/books/162/28#chlist.

[20] Постанова пленуму Верховного суду України « Про судову практику в справах про злочини у сфері обігу наркотичних засобів, психотропних речовин, їх аналогів або прекурсорів» від 26.04.2002 № 4 (у редакції 18.12.2009): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/v0004700-02.

means, in any form (powder, liquid, mixture, etc.), preparation by mixing different chemicals or chemical synthesis (reaction). The illicit manufacture of narcotic drugs, psychotropic substances forms the finished composition of the crime from the moment when the actions aimed at obtaining such drugs or substances ready for use, or to refining or increasing in their concentration of drugs, began to take place.

The purchase of drugs, psychotropic substances, their analogues or precursors should be considered as illegal purchase, exchange for other goods or things, acceptance as payment for work performed or services rendered, loans, gifts or debt payments, appropriation of the found. Illegal acquisition also refers to the collection of remnants of drug-containing plants in the harvested land after removal of the protection, on the land plots of citizens, as well as the collection of such wild plants or parts of them on vacant lots.

Unlawful storage means any deliberate action related to the actual unlawful possession of narcotic drugs, psychotropic substances or their precursors in the possession of the perpetrator (he may keep them with him, in any premises, storage or other place). In addition, the responsibility for illegal storage arises regardless of its duration.

Illegal carriage of narcotic drugs, psychotropic substances, their analogues or precursors is the deliberate movement of any kind of transport within the territory of Ukraine in violation of the procedure and rules established by the current legislation. The transportation of drugs, psychotropic substances, their analogues or precursors should be distinguished from their transportation from one place to another, during which the transport is not used. Such actions should be considered as storage of these agents and substances.

Illegal shipment of narcotic drugs, psychotropic substances, their analogues or precursors is the unlawful movement of drugs, whether by mail, baggage, mail order or otherwise, from one place to another within the territory of Ukraine. The crime is considered to be completed from the moment of registration and departure of the parcel, baggage, letter, parcel post with these means or substances, regardless of whether the addressee received them or not. If the crime has not been completed for reasons beyond the control of the perpetrator, the latter’s action shall be qualified as an attempt to commit the crime.

The offenses provided for in Articles 307, 309 or 311 of the Criminal Code[21] are recognized as having been completed from the moment of committing one of the alternative actions mentioned in the dispositions of these articles. In cases where the perpetrator committed one or more of these actions, but did not manage to take another action from those covered by the intent, the act should be considered as a completed crime by the actions performed, and the incomplete action of a separate qualification as preparation for crime or as an attempt to no crime is needed.

Illegal sale of narcotic drugs, psychotropic substances or their analogues (Article 307 of the Criminal Code), as well as precursors (part 2 of Article 311 of the Criminal Code) are any paid or free forms of their realization (sale, gift, exchange, payment of debt, loan, introduction by the owner) these drugs or injectables to another person with their consent, etc.). Sales are not co-administered injections of narcotic drug, psychotropic substance or their analogue by persons who have purchased them for common funds[22].

The subject of victimization according to Rivman DV is: "The persons whose rights or interests are actually harmed by the crime[23]. The subject of these crimes is a natural convicted person who has reached the age of 16. The exception is the abduction, misappropriation, extortion of drugs, psychotropic substances or their analogues, or the seizure of them by fraud or abuse of office (Article 308 of the Criminal Code), which provide for criminal liability from the age of 14. In the course of qualifying a series of actions, it requires the identification of characteristics that are specific to the specific crime subject. Such are the illegal issuance of a

[21] Постанова пленуму Верховного суду України « Про судову практику в справах про злочини у сфері обігу наркотичних засобів, психотропних речовин, їх аналогів або прекурсорів» від 26.04.2002 № 4 (у редакції 18.12.2009): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/v0004700-02.

[22] Постанова пленуму Верховного суду України « Про судову практику в справах про злочини у сфері обігу наркотичних засобів, психотропних речовин, їх аналогів або прекурсорів» від 26.04.2002 № 4 (у редакції 18.12.2009): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/v0004700-02. – Ст. 4.

[23] Ривман Д.В. Криминальная віктимологія : учеб. / Д. В. Ривман. – СПб. : Питер, 2002. – С. 82.

prescription for the right to purchase narcotic drugs or psychotropic substances (Article 319 of the Criminal Code); encouragement of minors to use doping (Article 323 of the Criminal Code) and others. If the act was made by a person who does not possess the characteristics of a special subject, the qualification for these articles is excluded.

The subjective side is the victim's "guilt", the motives and goals of its victim behavior[24]. "On the subjective side, crimes against the health of the population can be committed intentionally (overwhelmingly) and negligently. Actions manifested in violation of certain rules (violation of the established rules of circulation of narcotic drugs, psychotropic substances, their analogs or precursors (Article 320 of the Criminal Code), violation of sanitary rules and norms for the prevention of infectious diseases and mass poisoning (Article 325 of the Criminal Code) , inherent in both forms of wine. For the qualification of a number of crimes, it is necessary to establish a special purpose, which is included in the dispositions of the relevant norms as a mandatory feature. These include, in particular, the illicit manufacture, manufacture, purchase, storage, transportation, or shipment of precursors for the purpose of using them to manufacture or manufacture narcotic drugs or psychotropic substances (Article 311 of the Criminal Code).[25]

Also important is the fault of the person who committed the crime, which is divided into intent and negligence. In most cases, this category of crimes is committed intentionally. Pursuant to paragraph 4 of the Resolution of the Plenum of the Supreme Court of Ukraine "On case law on criminal offenses in the sphere of narcotic drugs, psychotropic substances, their analogs or precursors[26]", the intent to sell drugs, psychotropic substances, their analogs or precursors may testify an agreement with the person who purchased

[24] Ривман Д.В. Криминальная віктимологія : учеб. / Д. В. Ривман. – СПб. : Питер, 2002. – С. 82.

[25] Кримінальний кодекс України від 05.04.2001 № 2341-III (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/2341-14.

[26] Постанова пленуму Верховного суду України « Про судову практику в справах про злочини у сфері обігу наркотичних засобів, психотропних речовин, їх аналогів або прекурсорів» від 26.04.2002 № 4 (у редакції 18.12.2009): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/v0004700-02. – Ст. 4.

the products or substances, as well as other circumstances, including: large or particularly large; method of packaging and packaging; behavior of the subject of crime; the fact that the person does not use narcotic drugs or psychotropic substances himself, but manufactures and stores them; etc. It should be borne in mind that the responsibility for the sale of such agents and substances comes regardless of their size.

The actions of a person who, under the guise of narcotics, psychotropic substances, their analogs or precursors, intentionally sells any other means or substances for the purpose of seizing money or property, should be qualified as fraud, and if there is reason to do so, as inciting to attempted unlawful purchase of narcotic drugs, psychotropic substances, their analogues or precursors, the actions of the buyer – as an attempt to commit the crimes provided for in Article 307 or Article 309, or Article 311 of the Criminal Code.

In cases where a narcotic drug, psychotropic substance or their analogues has been simultaneously manufactured for both personal use and marketing, the offense is qualified on the basis of the crimes provided for in Articles 307 and 309 of the Criminal Code. It should be borne in mind that under Article 309 of the Criminal Code, the actions of the perpetrator must be qualified only in the part of the production, manufacture and storage of these agents and substances to the extent that he consumed or planned to use them. Money or other things obtained by a person for the sale of narcotic drugs, psychotropic substances, their analogues or precursors, are transferred to the state revenue on the basis of article 81, paragraph 1, section 1 of the Criminal Procedure Code of Ukraine[27], except for those received during the operational purchase, which are to be returned to the legal to the owner. Responsibility for the abduction, misappropriation, extortion of narcotic drugs, psychotropic substances, their analogues, equipment intended for the manufacture of these drugs, substances and their analogues, as well as precursors, for seizing them by fraud or abuse of office by their official

[27] Кримінальний процесуальний кодекс України від 13.04.2012 № 4651-VI (у редакції 14.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/4651-17. – Ст. 81.

position 8, according to Article 308, 313, 312 of the Criminal Code[28] in case of deliberate unlawful withdrawal by any of these methods from enterprises, institutions and organizations irrespective of the form of ownership or in individual citizens, including the seizure of drugs. existing plants or parts thereof from land or households before the end of the harvest. It does not matter whether the person lawfully or illegally possessed a narcotic drug, psychotropic substance, their analogue or precursor, or cultivated narcotic plants that became the subject of illegal seizure.

According to the contents of Articles 308, Sections 1 and 2, Article 313, Sections 1 and 2, Article 312[29] of the Criminal Code, responsibility for the theft of narcotic drugs, psychotropic substances, their analogues, equipment intended for their manufacture, or precursors arises in cases of unlawful secret or open, including the use of non-life-threatening or health-threatening violence, or the threat of such violence (with the exception of theft of such equipment), their removal from legal or natural persons who possess them both lawfully and N illegally (theft, robbery)[30].

CONCLUSIONS

The most frequently occurring cases were selected to familiarize themselves with the criminal situation in Ukraine in the field of narcotic business and conducted victim-modeling. Ways to avoid getting into such situations were suggested and actions were recommended to help prevent the development of drugs, psychotropic drugs, their analogues and precursors. Investigation of the elements of the crimes in the sphere of drug and psychotropic drug trafficking,

[28] Кримінальний кодекс України від 05.04.2001 № 2341-III (у редакції 16.04.2017): [Елекронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/2341-14.

[29] Кримінальний кодекс України від 05.04.2001 № 2341-III (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/2341-14.

[30] Постанова пленуму Верховного суду України « Про судову практику в справах про злочини у сфері обігу наркотичних засобів, психотропних речовин, їх аналогів або прекурсорів» від 26.04.2002 № 4 (у редакції 18.12.2009): [Електронний ресурс]. – Режим доступу: http://zakon2.rada. gov.ua/laws/show/v0004700-02. – Ст. 7.

their analogues and precursors will reveal important aspects of committing crimes that will prevent them, including by knowing the potential victim of possible ways of committing them.

SUMMARY

The scientific study examines the mechanism of behavior of drug offenders. The stages of criminal activity are analyzed. The motives and motivation of the act were investigated. An attempt was made to conduct victimology modeling. The essence of the elements of the crime composition in the sphere of drug and psychotropic substances circulation, their analogues and precursors is revealed. The research is aimed at increasing the role of the need to study the «victim's person» as an integral part of the evidence base in the process of conducting search operations.

REFERENCES

1. Бажанов М.І., Баулін Ю.В., Борисов В.І. Кримінальне право України: Загальна частина: Підручник / За ред. проф. М.І. Бажанова, В.В. Сташиса, В.Я. Тація. – 2-е вид., перероб. і допов. – Київ : Юрінком Інтер, 2005. – 480 с.

2. Офіційний сайт Реєстр судових рішень. Справа № 500/4294/14-к. [Електронний ресурс]: Режим доступу: http://www.reyestr.court.gov.ua/ Review/42858627.

3. Невеликі, великі та особливо великі розміри наркотичних засобів, що знаходяться у незаконному обігу / Таблиця 1 / Затверджена наказом Міністерства охорони здоров'я України 01.08.2000 N 188 (у редакції 19.06.2015): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua /laws/show/z0512-00.

4. Кодекс України про адміністративні правопорушення (статті 1 – 212-21) від 07.12.1984 № 8073-X (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/80731-10.

5. Кримінальний кодекс України від 05.04.2001 № 2341-III (у редакції 16.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/2341-14.

6. Офіційний сайт Реєстр судових рішень. Справа № 486/1038/15-к. [Електронний ресурс]: Режим доступу: http://reyestr.court.gov.ua/Review/ 54746382.

7. Сайт Укрінформ. [Електронний ресурс]: Режим доступу: http://www.ukrinform.ua/ukr/news/urugvay_legalizuvav_marihuanu_1895217.

8. Науково-практичний коментар до Кримінального Кодексу України [Електронний ресурс]. – Режим доступу: http://pravoznavec.com.ua /books/162/28#chlist.

9. Закон України «Про наркотичні засоби, психотропні речовини і прекурсори» від 15.02.1995 № 60/95-ВР (у редакції 28.12.2015): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/60/95-вр.

10.Ривман Д. В. Криминальная віктимологія : учеб. / Д. В. Ривман. – СПб. : Питер, 2002. – 304 с.

11.Постанова пленуму Верховного суду України «Про судову практику в справах про злочини у сфері обігу наркотичних засобів, психотропних речовин, їх аналогів або прекурсорів» від 26.04.2002 № 4 (у редакції 18.12.2009): [Електронний ресурс]. – Режим доступу: http://zakon2.rada. gov.ua/laws/show/v0004700-02.

12.Кримінальний процесуальний кодекс України від 13.04.2012 № 4651-VI (у редакції 14.04.2017): [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/laws/show/4651-17.

Information about the author:
Klymiuk I. N.,
Lecturer of the Department of Administrative and Criminal Law
Oles Honchar Dnipro National University
72, Gagarin Ave., Dnipro, Ukraine

DOI https://doi.org/10.36059/978-966-397-207-7/76-92

WORLD-METHODOLOGICAL AND HISTORICAL ORIGINS OF CRIME PROBLEMS IN THE AREA OF ILLEGAL TRAFFICKING

Kornyakova T. V.

INTRODUCTION

The history of the drug has its long-standing roots. In the Middle East in 5000 BC the "grain of joy" was spread, the so-called opium poppy. About 2700 BC used hemp in China in the form of infusion, and tea-emperor Sheng Nung ordered his subjects to take it as a cure for gout and inattention. The Stone Age people were aware of opium, hashish and cocaine, these drugs were used to change their minds and in the process of preparing for battle. Even on the walls of the funeral complexes of the Indians of Central and South America there are images of people with coca leaves dating from the middle of 3,000 BC.

Throughout history, contacts between distant cultures have come about through trade and war, and drug addiction is no exception. As a result of Marco Polo's crusades and travels, Europeans became aware of opium and hashish, which were widespread in the East. After that, as a result of traveling to America, the British, French, Portuguese and Spanish brought to Europe cocaine (from South America), hallucinogens (from Central America) and tobacco (from North America).

Moreover, there was a bilateral exchange between cultures. Ethiopia is considered to be the birthplace of the coffee tree. Acquaintance with Europeans, which took place in the 17th century, when sailors imported coffee beans to South America, which is today the world's largest coffee producer. Alcohol from distillation also came from Europe to America, and cannabis appeared in Chile in 1545.

At the beginning of 20th century, there were virtually no restrictions on the production and consumption of drugs. Only occasionally attempts have been made to reduce or prohibit the use of

certain substances, but they have been short-lived and usually unsuccessful.

1. Historical origins of the production and distribution of narcotic drugs – the opiate group

The name «opium» comes from the Greek «opium» which means juice. The British Egyptologist R. Thompson in 1924 reported the mention in the ancient Egyptian manuscripts of the procedure for the collection and medical use of opium: «Early in the morning, an old woman, boys and girls collected juice on cuts (poppy capsules) a small iron spoon and then transferred it to a spoon».

According to the historians of Judea, poppy juice is mentioned even in the Bible, in several passages of the Old Testament you can find the word corresponding to the Hebrew «head» and may mean the poppy head. In the Talmud, the meeting of religious-ethical and legal provisions that took place in the IV-V centuries BC, and contains information on medicine, which has a reference to opium, which is expressed by the word Greek etymology – «ophion».

In addition to opium addiction, in the ancient world there were other forms of desire to intoxicate various poisonous substances. Opium had a useful, in some cases, hunger function, the practical use of which proved to be very appropriate for Muslims, among whom there were always several people who could hardly bear the hardships of the rigid month of fasting known as «Ramadan».

The medical use of opium can be identified with the «father of medicine» Hippocrates (440-377 BC) in the works of which mention the properties of 300 medicinal plants, including a substance called «meconin», which is attributed to narcotic action. There is a mention of milk poppy juice and Theophrastus around 350 BC. In its use, «meconin» means opium and is recommended for eye diseases and mental disorders.

Opium is beginning to penetrate Europe as a medicine in the era of the crusades of Christian troops in Palestine. Tabernemontanus even wrote a book called «Magsamensaft», which translates to «Poppy Seed Juice», in which he indicated the need for using this potion in clearly defined cases and did not advise him to abuse it.

The first drug specifically made from opium was prescribed to a patient in the 15th century by Paracelsus.

The following mention of opium in history is reflected in the description of China's attempt to colonize Britain.

Which was called the opium war because the British traders were importing opium into China. By the middle of the 19th century, several million Chinese had already become addicted to opium. By that time, China had become the world's first opium user, much of which was grown in India and shipped to the country by the British. The Chinese government has enacted many opium import control laws, but none, including a complete ban, has had the desired effect.

The British did not want to reduce the opium trade. This happened for two reasons: first, it made big profits, and secondly, there was no surge in drug addiction in England, although opium was widely used in medicine. In 1839, a conflict erupted: the Chinese government destroyed a large load of opium owned by British and American traders. In order to destroy the destructive effects of opium, the Chinese emperor in 1839 in Canton launched a massive operation to seize and destroy opium stocks. Colonial cargo-drowning ships were drowning in the sea. These actions can be considered, first, in the history of mankind, the state anti-narcotic program. However, such actions by the Chinese authorities did not meet the understanding of the British colonialists, and in response to such actions Britain sent colonial troops to protect their ships.

The first opium war began. Britain was still able to defeat it, and by the Nanking Treaty of 1842, in addition, was granted the right to use the ports of Hong Kong as compensation for the destroyed cargo of opium. Trade continued, and in 1856 led to the Second War, which ended in 1858 and under the terms of the Tiensin Treaty, China continued to import opium, but could already set large customs duties. The opium trade declined and eventually ceased. The victory in this way has brought enormous benefits to the colonialists and, in particular, huge profits have been made by members of the British royal family. So, soon enough, the Chinese began to refocus their agriculture on growing tea and rice on the poppy plantation. However, in implementing the anti-narcotics program in 1905, the Chinese government adopted a phased ban on opium, which was implemented over the next ten years. The fight against drug addiction

remains one of the priorities of China's public policy – currently one of the most stringent anti-narcotics legislation.

Morphine (an outdated variant of the name morphine) is one of the major alkaloids of opium found in the sleeping pill (Papaver somniferum). Morphine was first extracted from opium in 1804 by German pharmacologist Friedrich Serturner. It was he who gave morphine the name of the dream god in Greek mythology – Morpheus, son of Hypnos, the god of sleep.

Morphine was the first purified alkaloid. However, it became widespread only after the invention of the injection needle in 1853. It has been and continues to be used under strict control to alleviate pain.

In addition, it was used as a «cure» for opium and alcohol dependence. The widespread use of morphine during the American Civil War has reportedly led to the emergence of «army disease» (morphine dependence) in over 400,000 people. In small amounts, morphine is also formed during the demethylation of codeine, which occurs inside the human liver. This process occurs after the application of codeinomist drugs. In 1874, diacetylmorphine, better known as heroin, was synthesized from morphine.

Morphine addiction (morphinism) came about after the method of using morphine by subcutaneous injection was invented. Tom de Quincy left an essay «The Confession of an English Opioman» (1822), detailing how morphine drug addiction develops. At the end of the 19th century, German soldiers and officers returning from the Franco-Prussian War of 1870-1871 were morphine in most cases. A large number of soldiers in the conditions of hostilities were stabbing themselves with morphine, which at that time became available and a fashionable stimulant and sedative. In 1879, in one of the works appeared a description of the disease, called «soldier's». At that time, almost every disease in the US Army was treated with opium. In 1880, an international conference announced the emergence of a new drug addiction disease caused by drug abuse.

At the beginning of the 20thcentury, many doctors became morphinists. In the medical environment, it has been suggested that a physician who understands the perniciousness of morphism is able to self-administer morphine on his or her own, avoiding self-destructive passion. Practice has shown that this is a false statement. Mikhail

Bulgakov, the author of the story Morphine, was a morphinist, but he was cured of drug addiction by his wife's selfless help. Leo Tolstoy in Anna Karenina describes how the main character was addicted to morphine after it was first used to relieve pain in childbirth.

Before heroin synthesis, morphine was the most common narcotic analgesic in the world. Morphine as well as other morphinated alkaloids are found in plants of the genus Poppy, Stephanie, Synodium, moonshine. They are less commonly found in the genera croton, coculus, triclysia, mesothelioma.

2. Drugs derived from hemp. Hallucinogens. Incentives and drugs of other origin

For the production of narcotics, almost all varieties of hemp are suitable. The cannabis plant contains «sannabinodes» an alkaloid that causes hallucinations in humans.

The narcotic effect on the organism in the hemp plant is caused by Delta 9 or THC «tetrahydrocannabinol» (a narcotic active component). Derived cannabis, unlike opiates, is not a medicine, but is used solely by drug users. Hemp derivatives are hallucinogens. Depending on the time and method of collection, as well as the method of processing, there are three main drugs of cannabis: marijuana, hashish and hashish.

The oldest and most popular variety of soft intoxicants is the well-known cannabis (Cannabis sativa). Hemp seeds and potions made from cannabis are found in excavations of Eurasian cultural layers for more than three thousand years (in Siberia, for example, in the crypts of high-ranking mummified persons, snuff boxes with faded inflorescences of the plant were found). Cannabis was also found in ancient Egyptian burials of the third millennium BC.

Originally this plant from Central Asia. It is assumed that it was from here that hemp spread to the east: India and China. From India, cannabis flowed to North Africa and Spain, from where it came to America through seafarers.

Oriental culture retains the most archaic written evidence of marijuana. Fifteenth-century BC Chinese physicians' evidence of cannabis use as a remedy for rheumatic pain and gout has been dated.

A little later, cannabis was used as a cure for nervous disorders. In India, marijuana has been recognized as a sacred herb.

Hemp was well known in the ancient world. Surgeon Doscorid, who used cannabis for anesthesia, mentions his ability to cause «phantom and insult» (the high-dose cannabis doses requiring the hallucinogenic properties of cannabis resins are required for the analgesic effect). Thanks to Herodotus, there is a description of the cleansing rites of the Scythians, who, hiding in tents, threw hemp seeds at the burning stones and inhaled the vapors of «joy» (5-4 BC).

Legends of cannabis and its use can be found in many religions: in Shinto (Japan), hemp was used to reunite married couples, to banish evil spirits, and to create fun and happiness in marriage; in Hinduism – hemp is a sacred plant that Shiva has ordered to bring from the Himalayas for «enjoyment and human education», in Buddhism hemp is widely used as food and for ritual purposes; the followers of Zarathustra (Magi – Persia, 5-6 centuries BC) practiced religious and medical use of hemp; The Essenes (Ancient Egypt – 1st century BC), Islamic Sufis, Copts (early Egyptian Christians) and many other religious communities knew all about the properties of this plant.

According to German ethnographer Hugo Obermeyer, smoking cannabis with tubes was known to ancient Germans and halo-Romantsev in the first century BC. Therefore, the official European history of the humble textile plant hides a deep esoteric and medicinal tradition, which was lost in the «witch hunt». Interesting is the fact that hemp (the oldest and most widespread plant) was first introduced into the classification only in 1753 (K. Linnaeus), another species was described by Lamarck in 1783. According to some reports, early Christian communities encouraged the use of healing herbs, which a wise man should not avoid (Catholic Bible, Sir 38: 4). Cannabis has never disappeared from the eyes of priests: in addition to the well-known and then used medicinal properties, it provided paper production and oil for lamps. But they deliberately try not to mention him.

Legislative persecution began in the XII century, when the church banned cannabis use in Spain and in the XIII century in France. In 1484, Pope Innocent VIII officially disconnected cannabis medicines, declaring cannabis unenlightened by communion with the satanic

mass. At the time, the following medicines were allowed for residents of Western Europe: wearing a bird mask (for treating ulcers), bloodletting with pints and quarters (from pneumonia, colds or fever) and prayer asking for healing. The ban on medical use of hemp was lifted only 150 years later. Alcohol, which by that time had already learned to «strengthen», was known to be a legitimate intoxicant.

Since the Middle Ages, the relationship of Western man with cannabis has changed many times, becoming the subject of moral speculation, then touching on economic benefits. While the church persecuted Europeans using cannabis, the Spanish conquerors cultivated it across the globe for the production of sails, ropes, clothing and other purposes, for which the sailors smiled silently. Near the western port cities, hemp fields have often grown, as cannabis fibers are the most durable and waterproof. Of course, both the harvesters and the producers and sailors knew well about the psychoactive properties of this plant.

After the colonization of India and the invasion of Napoleon into Egypt in Europe, renewed interest in hemp products. At the end of the eighteenth century, the Emperor's Life Medicine brought to Paris a whole collection of different varieties of marijuana, and thanks to the secular protege of the French, cannabis was first identified in terms of official culture.

In 1839, the English physician W. Shaughnessy, a member of the Royal Academy of Sciences, published a paper on the successful use of cannabis as an analgesic in the treatment of rheumatism, convulsions and convulsions. At the same time, the official medical use of hemp is spreading in Europe and America: infusion of leaves and inflorescences served as an antispasmodic and hypnotic agent, and light hemp oil was used to relieve inflammation.

Unauthorized use of cannabis was of concern to clergy only and was not legally prosecuted. In 1864, Egypt became the first country (now existing) to ban the use of hemp.

It is known that in the second half of the 19th century, the «Hasgashish Club» was located in Paris on the banks of the Seine, a small society of writers and artists who were fond of exotic potions. «The members of this club regularly met and used hashish in quantities that can be regarded as very large today.» These were eminent writers: S. Baudelaire, T. Gauthier, P. Verlaine, A. Rambo,

O. Balzac, A. Dumas and others. Thanks to them, hashish has become widely known in the European cultural tradition. At that time, society could not properly explain the effect of the effect of psychedelic plants on humans. Only in the XX century, a wide and often unpredictable range of manifestations of the human unconscious was substantiated in the writings of 3. Freud, KG Jung, A. Adler, W. Reich, O. Ranck, A. Maslow, S. Grof and other famous scientists.

The authentic history of hemp on the American continent begins with the fourteenth century, when the Spaniards brought «grass» and Peru and Chile, although some researchers believe that the plant was known to the indigenous people of the New World long before the invasion of Europeans. Since 1611, hemp has been cultivated in Virginia. The textile and medicinal properties of cannabis were well known to the first US presidents (the government paid grants to hemp farmers). In 1857, the American writer F. Ludlow describes personal experience after receiving a tincture of Indian hemp, confirming the sacred power of this plant. The psychoactive properties of cannabis were admired by G. Toro, G. Melville, and other well-known American writers and philosophers.

Between 1840 and 1900, over one hundred papers on the medicinal properties of cannabis were published in Western medical literature. Until 1937, hemp was the main drug in the treatment of more than 100 different diseases in the US pharmacopoeia: as a remedy for asthma, migraines, herpes, arthritis, rheumatic pain, dysentery, insomnia, and various neurological disorders.

F. Nietzsche, according to the description of his biographer D. Halswy, being a weak and painful man, used hemp infusion, which was the only cure for him in crisis times.

At the beginning of the 20thcentury, smoking «grass» in the United States was widespread mainly among hired Mexican workers. From them originates the well-known name of marijuana (marijuana). At that time in South America and the Caribbean, this tradition was known for half a century. Among white Americans, mass interest in cannabis emerged only after dry law in the 1920s. However, as the state’s policy toward opiates and cocaine was determined, this plant weight often came under the close scrutiny of the authorities, and only by virtue of the well-known clinical features of cannabis remained legal.

In 1937, 46 US states banned marijuana as a «drug that causes violence». This was thanks to Harry Anslinger (1893-1975), who headed the then State Bureau of Drugs. He started a campaign against smoking marijuana: African Americans and Mexicans, according to Anslinger, along with this habit, «spread violence among young Americans.» However, cannabis medication was still used in medicine, and marijuana cigarettes could be purchased over the counter in pharmacies (for smoking in asthma). In 1941, cannabis drugs were excluded from the US Pharmacopoeia. After World War II, in 1948, the same Anslinger led a heated debate with doctors and the public about the continued ban on cannabis. He is now proving that it is the most dangerous drug that can be used by the Communists to turn American soldiers into pacifists.

These triggered responses from the eastern bloc of communist countries, although before that neither Russia nor China, long ago cultivating cannabis for industrial and medical purposes, saw no need to combat the habit of some of its citizens in the grass. However, this time at the third session of the UN General Assembly in Paris on November 19, 1948, the Protocol on International Narcotics Control was signed, among which marijuana was now considered (before that, and mainly opium).

American sociologists report that the pursuit of cannabis, long ago used for industrial purposes, was also profitable for oil magnates, who began to make oils and fibers using new technology. Hemp is a cheap, natural raw material that can compete with «universal» synthetics. From the fifties, thanks to a lively interest in hallucinogens, the popularity of cannabis in the West began to grow rapidly. In the late sixties, smoking in marijuana in the United States became widespread: cannabis became a symbol of the youth movement. Many have seen this not only as a demonstrative rejection of the conventional alcohol tradition, but also as an important step towards improving the psychological atmosphere in society.

However, marijuana remained outlawed. Some famous people went to jails in the 1960s and 1970s for «storing or transporting drugs», as «grass» was very popular, and finding it for the police was no problem. In October 1968, John Lennon and Yoko were arrested during a search of London’s Ringo apartment where they were staying. Police charged them with possession of marijuana. For the

same reasons, John Sinclair, Mick Jagger, Kate Richard, and many other well-known cultural figures went to prison.

Statistical surveys in 1972 showed that more than half of American university students tried «grass» at least once, about 30% consumed it several times a week, and about 5% smoked it daily for more than three years. In February 1976, a special annual report to the US Congress provided data showing that more than half of all Americans between the ages of 18 and 25 had tried marijuana at least once.

Wanting to know the dangers of their children, parents deducted money to study the effects of cannabis smoking on human health. The government was willing to support these studies, and soon the fears were reduced. In 1963, following the resignation of Anslinger, doctors were able to resume some cannabis research, which saw great medical and therapeutic potential.[1]

Marijuana is a mixture of crushed cannabis plant parts. Most often, the color and leaves on which the resin accumulates are ground and ground. Female marijuana is commonly used to make marijuana. The main psychoactive component contained in marijuana is tetrahydrocannabinol. The total number of consumers is estimated at 181 million. Smoking marijuana is harmful because inhalation of the results of combustion of organic substances can cause various health problems.

Marijuana is a narcotic drug that is the apex of cannabis with flowers, fruits and leaves (crushed dried or not dried). The content of THC-tetrahydrocannabinol (narcotic active component) in marijuana from is 2 to 4%.

Stimulants: A group of substances from among the stimulants of the nervous system that activate mental activity, stimulate the central nervous system. Cocaine is a white crystalline powder that has a crystalline structure that looks like salt or soda, sparkles in the sun, and is very life-threatening.

Cocaine is the oldest, one of the strongest and one of the most dangerous stimulants of natural origin. Cocaine is found in the leaves

[1] Петросян С. Р. Культура безумия. Проблема популярности психоактивных веществ. 1998. [Электронный ресурс]: Режим доступа: http://ec-dejavu.ru/c-2/Cannabis.html.

of the Coca plant, which sprouts in the tropical zone of South America, which today is our main supplier of cocaine. The indigenous population used the leaves of this plant as a tonic and narcotic drug. The coca plant did not require special care, grew on its own and could be harvested several times a year. In the history of the extinct Inca empire, the use of the leaves of this plant was widespread among the nobility. Warriors and messengers were given leaves before the march, stimulating vitality and suppressing feelings of hunger.

The euphoric state they got as a result of the drug was identified with a visit to the world of spirits, which, in their opinion, strengthened the soul and body. After the conquest of the South American part of South America, Peru, by the Spaniards in the sixteenth century, they attempted to impose a ban on coca, but with strong resistance, they simply took control of all trade. About 70% of Peru's population was directly or indirectly involved in the trade of this plant, and the Spanish Treasury made huge profits. As a rule, not all the indigenous population consumed coca, and not always, but with the arrival of the Spaniards, everything changed. Forcibly chasing Indians to places of coca collection, difficult working conditions, barbaric attitude towards them, was the cause of mass consumption of coca leaves. Slave Indians who worked on Spanish silver mines provided coca leaves, making it easier to control and operate.

Cocaine was gradually spreading around the world. The first pure cocaine was obtained in 1855 by the German chemist Friedrich Hedke. After that, many chemists continued to work on the chemical structure and formula of cocaine. So in 1859, the German chemist Albert Niemann conducted new research and in 1860 published his dissertation on a new substance – cocaine, which is contained in the leaves of the coca plant. The dissertation earned him a doctorate. It was not until 1897 that Richard Wilstetter was able to synthesize cocaine in the Einhorn laboratory. Well-known writer-psychologist Sigmund Freud, at the beginning of his activity actively recommended cocaine as a stimulant, analgesic drug and helps to cure

sexual impotence[2]. Psychoanalyst Sigmund Freud, himself a cocaine addict, was the first to widely market cocaine as a tonic for the treatment of depression and impotence.

In 1886, cocaine became even more popular when John Pemberton introduced coca leaves into his new non-alcoholic beverage, Coca-Cola. The euphoric and exciting impact on consumers has contributed to the rise in popularity of the company around the turn of the century. So cocaine began to grow in popularity. From the 1850s to the early 1900s, cocaine and opium elixir (magic or medical), tonic and wine were widely used by representatives of all social classes. Cocaine has become a mainstay of the silent movie industry, and messages of support for cocaine came out of Hollywood at the time, affecting millions. Cocaine consumption in society has increased, and the threat posed by cocaine has gradually become more prominent. In 1905, it became popular to inhale cocaine through the nose, and within five years hospitals and medical literature began to report cases of damage to the nasal tissues caused by cocaine use. The increase in cocaine consumption has made it noticeable the problems caused by it. And this, in the end, led to demands from the public to ban cocaine and its mass consumption. In 1903, public pressure forced Coca-Cola to stop using coca in soft drinks. In 1912, the United States government reported that cocaine had caused 5,000 deaths, and by 1922 cocaine was officially banned.

Cocaine is usually consumed with sugar, novocaine, amphetamine and other drugs similar to novocaine. Derived from coca leaves, cocaine was originally synthesized as an analgesic. Most often, cocaine is sniffed – the powder enters the bloodstream through the tissues of the nose. Sometimes it is swallowed or rubbed into other mucous tissues, such as gums. In order to get the drug into the body as quickly as possible, some cocaine addicts are injected into the bloodstream, however, it greatly increases the risk of overdose. Inhaling cocaine in the form of smoke or vapor speeds up the absorption process with less risk for life than injections.

It is only necessary to start using cocaine, as it becomes almost impossible to get rid of its power. Physiologically, cocaine stimulates

[2] История появления и использования кокаина. Narconon. [Электронный ресурс]: Режим доступа: http://www.narcomanii.net/istorcoks.

nerve endings located in the brain, which track changes in the body, causing euphoria, which is very addictive. But you can repeat the effect only by constantly increasing the dose. Cocaine is considered a «drug for the rich,» but it can be purchased at low prices for a sample. However, as soon as a person is «stuck» in cocaine, its costs sharply soar upwards, depending on how long it takes to quench the habit. The cocaine trade brings in multi-billion dollar profits. Cocaine users include people of all ages, professions and financial backgrounds, not even children. Death from respiratory failure, stroke, hemorrhage into the brain, heart attack – this is the usual end of cocaine happiness. Children of mothers of drug addicts are born with drug addiction. Many have birth defects and many other health abnormalities. But deadly cocaine is still thriving.

Sometimes cocaine is used with other drugs, such as tranquilizers, or mixed with pervitin, marijuana and heroin, which increases the risk of overdose. The dose may be fatal or addictive to all drugs at once.

Immediately after cocaine is high, there is deep depression, irritability and an all-consuming desire to take more drugs. Appetite disappears, sleep, heart rate increases very much, cramps and convulsions reduce muscles. Cocaine changes the perception of the world – a person acts like a paranoid, showing anger, malice, and anxiety. Regardless of the dose of cocaine, it increases the risk of heart attacks and causes respiratory failure, both of which can cause sudden death. Long-term daily cocaine intake leads to insomnia and loss of appetite. A person becomes psychotic and may have hallucinations. As cocaine becomes involved in the process of brain processing of chemicals, it becomes necessary for a person to receive more and more drugs in order to feel «normal.» People who have become addicted to cocaine (as they do with many other drugs) are losing interest in other areas of life. A person’s attempt to stop cocaine causes such severe depression that a person goes to anything – even a murder – to get the drug. If cocaine is not obtained, depression can lead to suicide.

Instant Side Effects:

3. Loss of appetite;
4. Fast heartbeat, high blood pressure and temperature;
5. Narrowing of peripheral blood vessels;
6. Shortness of breath;

7. Pupil enlargement;
8. Restless sleep;
9. Nausea;
10. Excessive arousal;
11. Strange, unstable behavior, tendency to violence;
12. Hallucinations, hyper-excitement and irritability;
13. Touch hallucinations during which the illusion of insects crawling under the skin appears;
14. The greatest need for drugs;
15. Painful anxiety and paranoia;
16. Strong euphoria;
17. Depression;
18. Panic and psychosis;
19. An overdose (even a single one) can lead to seizures, seizures and unexpected death.

Delayed side effects:

1. Cocaine causes irreversible damage to the blood vessels of the heart and brain;
2. High blood pressure leading to heart attacks, stroke and death;
3. Destruction of the liver, kidneys and lungs;
4. Destruction of the tissues of the nose (by inhalation of the drug);
5. Difficulty breathing (when smoking);
6. Infectious diseases and infections during intravenous administration;
7. Loss of appetite and weight;
8. Strong tooth destruction;
9. Auditory and tactile hallucinations;
10. Sexual disorders, reproductive function disorders and infertility (in men and women);
11. Disorientation, apathy and exhaustion;
12. Irritability and mood swings;
13. Dandruff and psychosis;
14. Strong depression;
15. Addictive (even after one reception).[3]

[3]Кокаїн. [Электронный ресурс]: Режим доступа: http://www.netnarkotik.ru/ua_index.

In addition, cocaine is available in various forms: coca paste, cocaine hydrochloride, crack, and baseball. Coca paste is a relatively inexpensive product obtained by cocaine extraction from coca leaves. Whitish, cream or beige, usually moist, contains soft aggregates that are easily destroyed by the pressure of a finger. In addition to cocaine, it contains substances that are added for extraction, such as manganese carbonate. Cocaine content ranges from 40 to 90%[4].

Cocaine medicines are also aqueous solutions of cocaine hydrochloride. White, slightly yellowish or cream powder, is included in the content of solid transparent crystals. The substance obtained directly from the manufacturer or wholesaler is a well-purified product containing 80-95% cocaine and a minimum of minor alkaloids and ballast. In retail, the original stock is, in most cases, diluted 2-3 times with different impurities. As ballasts, cocaine-like cheap stimulants, amphetamine, caffeine, etc., which are not organoleptic, can be used.

This operation allows almost imperceptibly to dilute the dose 2-3 times for the client. Also cheaper ballast substances are used – powdered sugar, powdered milk – which significantly reduce the effectiveness of the dose, but allow to obtain from the initial dose of 5-6 secondary.

Crack is a cheaper version of cocaine that is intended for smoking. It is a free base obtained by alkaline solvent extraction. Because cocaine hydrochloride is relatively expensive and decomposes at high temperatures, in the late 1970s, its free base was marketed. Due to the higher decomposition temperature, this substance can be introduced into the body by smoking. At the end of the XX century, this type of cocaine spread to the United States and Latin America. It was named after the characteristic shedding that accompanies its smoking, this sound occurs when the crystals of the free base of cocaine are thermally destroyed. The melting point of the crack is 98 °C, which makes it easy to evaporate when smoking without losing its narcotic

[4] Веселовская Н. В., Коваленко А. Е. Наркотики. Свойства, Действие, Фармакокинетика, Метаболизм. Пособие для работников наркологических больниц, наркодиспансеров, химико-токсикологических и судебно-химических лабораторий. – Москва : Триада-Х, 2000. – С. 76–79.

effect. Crack is also used as a warm substance using a heroin-like method of injecting cocaine inside a heated teaspoon.

Speedball is a mixture of crack cocaine and heroin, the most dangerous form of distributed cocaine. The significant health risk is caused by the cross-interaction of the opium drug heroin and the cocaine stimulant. Such a combination can cause serious complications in the functioning of the cardiovascular system, in the future – cross-physical dependence with severe withdrawal syndrome[5].

CONCLUSIONS

Various drugs are obtained by processing poppy plants in the factory and in handicrafts. Opiate drugs are «sedative» and inhibit action. This group includes natural and synthetic substances containing morphine compounds. In most cases, they are given intravenously. All natural narcotic drugs come from poppy seeds. All raw opiates from herbal raw materials have an easy binder effect when hit on the tongue. Contains opioid alkaloids – morphine, codeine and others. In the treated form look like solutions. In the case of handicrafts from vegetable raw materials – a brown solution, similar to strongly brewed tea, with a distinct, sometimes sharp smell of vinegar. When settled, it becomes lighter and more transparent, giving a precipitate in the form of small dark particles. This is a bad thing «black solution» or «black». It may also look like a clear solution in ampoules or in vials similar to Penicillin. Such vials can be made of dark glass and have a label like «morphine hydrochloride».

SUMMARY

The historical stages of the occurrence of narcotic crime and the history of the occurrence and distribution of drugs have been covered in scientific work. The work is structured based on the properties of drugs and their groups. According to which drugs can be divided into: opiates, depressants made from hemp (hallucinogens), stimulants and drugs of other origin. The opiate group includes: opium, heroin,

[5] Маркова И. В. Клиническая токсикология детей и подростков. – Санкт-Петербург : Интермедика, 1998. – Т. 1-й. – С. 147.

acetylated opium, codeine, etc. Depressants include: barbiturates, tranquilizers, methadone, etc. Drugs made from cannabis plants includea: marijuana, gaish, hashish oil, LSD, phencyclidine, spice, ecstasy, etc. The group of stimulants include: cocaine, amphetamine and others. The content of drugs and their impact on humans, both biologically and socially, have been analyzed.

REFERENCES

1. Петросян С.Р. Культура безумия. Проблема популярности психоактивных веществ. 1998. [Электронный ресурс]: Режим доступа: http://ec-dejavu.ru/c-2/Cannabis.html.
2. История появления и использования кокаина. Narconon. [Электронный ресурс]: Режим доступа: http://www.narcomanii.net/istorcoks.
3. Кокаїн. [Электронный ресурс]: Режим доступа: http://www.netnarkotik.ru/ua_index.
4. Веселовская Н. В., Коваленко А. Е. Наркотики. Свойства, Действие, Фармакокинетика, Метаболизм. Пособие для работников наркологических больниц, наркодиспансеров, химико-токсикологических и судебно-химических лабораторий. – Москва : Триада-Х, 2000. – С. 76–79.
5. Маркова И. В. Клиническая токсикология детей и подростков. – Санкт-Петербург : Интермедика, 1998. – Т. 1-й. – С. 147.

Information about the author:
Kornyakova T. V.,
Doctor of Laws, Professor,
Head of the Department of Administrative and Criminal Law
Oles Honchar Dnipro National University
72, Haharin av., Dnipro, Ukraine

DOI https://doi.org/10.36059/978-966-397-207-7/93-122

INVOLVEMENT OF SPECIALISTS IN INVESTIGATIVE ACTIVITIES IN THE INVESTIGATION OF CRIMINAL OFFENSES

Pyrih I. V.

INTRODUCTION

At the present stage of the formation and development of the Ukrainian state there are major processes of transformation of socio-economic and political relations, which take place in difficult conditions, characterized by high levels of crime, including its organized forms, criminalization of the economy and other spheres of society. One of the main tasks of criminal justice is to ensure the speedy, complete and impartial investigation of crimes. To solve this problem, the investigator, the prosecutor, the court must take all the measures provided by law, applying their knowledge and experience. However, only legal knowledge is not enough to solve these problems.

The development of modern science, and, above all, the applied sciences, which include forensics, due to the interpenetration of knowledge, the use of advanced methods of other sciences to solve the challenges facing law enforcement agencies. It is impossible to imagine the process of investigation of crimes without the use of the achievements of natural, technical and other sciences. It is also impossible to imagine a modern investigation without the use of the latest advances in scientific and technological progress and the scientific and technological means developed on their basis. Therefore, it is no coincidence that the term scientific category «special knowledge», which embodies the knowledge itself is not a legal profile, originated in the theory of criminal justice and occupies a decisive place among the main categories of criminalistics. Therefore, in order to properly solve the problem of combating crime, to investigate every crime in a timely and qualitative manner, not only the professional knowledge and skills, which are formed on the basis of a complex of scientific knowledge, the experience of

investigating crimes, but also special knowledge from other rapidly developing fields, are required thanks to scientific and technological progress. The above determines the relevance of forensic trends in the development of forensics.

Researchers have offered many definitions of specialist knowledge used in criminal justice. Considering the majority of the opinions expressed by scientists that sufficiently reveal the essence, purpose and directions of the use of special knowledge, let us mention the basic criteria for defining the concept of special knowledge. First of all, when determining special knowledge, it should be borne in mind that: 1) special knowledge is non-legal, except for the above, that is, knowledge that is not professional for the investigator, employees of the operational units, the prosecutor, the judge; 2) must be based on the achievements of science, not be generally known; 3) by the method of obtaining special knowledge is acquired either by theoretical assimilation of certain information, or by periodic practical training by a separate type of work; 4) the purpose of using specialized knowledge is to facilitate the resolution of criminal justice tasks.

Summarizing, you can define the scientific category «special knowledge». Specific knowledge – a set of theoretical knowledge and practical skills in science, technology, arts or crafts acquired as a result of professional training or professional experience used to investigate and prevent crime. At the present stage, there is no consensus on the forms of use of specialized knowledge, its quantity, procedural regulation, content and classification. We join the opinion of scholars who share the forms of using specialized knowledge for procedural and non-procedural ones[1]. Procedures should be considered procedural such as are expressly provided by law, namely: a) the participation of a specialist in criminal proceedings; b) forensic examination. Non-procedural should be considered special

[1] Аверьянова Т. В., Белкин Р. С., Корухов Ю. Г., Россинская Е. Р. Криминалистика. Учебник для вузов. Под ред. Заслуженного деятеля науки Российской Федерации, профессора Р. С. Белкина. М. : Издательство НОРМА, 2000. С. 398; Гончаренко В. И. Использование данных естественных и технических наук в уголовном судопроизводстве (методологические вопросы) : монография. К. : Вища школа, 1980. С. 109.

knowledge not outside the criminal process, and those that are not expressly provided by law. Such forms are: a) departmental investigations, inspections of technical condition; b) conducting site studies directly at the scene; c) consultative help; d) providing technical assistance in the preparation of technical equipment, the implementation of labor-intensive work; e) the use of assistance of knowledgeable persons in conducting operational search activities.

The legislator allows the application of any kind of specialized knowledge in the fields of science, technology, arts and crafts. This is quite true, since criminal law rules regulate a large number of social relations, and knowing the causes and circumstances of their violation in the investigation process may require the application of different specific knowledge, experience and skills. Equally important is the fact that humanity in its development is constantly enriched with more and more knowledge in various fields, so it is impossible to provide a comprehensive list of them in law. Consider one of the most important procedural forms of the use of specialized knowledge, namely the participation of a specialist in conducting investigative actions.

1. Involvement of specialists in the inspection of the scene

Pre-trial investigation is carried out within the limits and with clear regulation of norms of the Criminal Procedure Code of Ukraine. According to the forms of use of specialized knowledge and the legislation in force, the subjects who possess them are an expert (Article 69) and a specialist (Article 71). According to Article 71 of the Criminal Procedure Code of Ukraine, «a specialist in criminal proceedings is a person who possesses specialized knowledge and skills in the application of technical or other means and can provide advice during pre-trial investigation and judicial review on issues requiring relevant specialized knowledge and skills. The specialist may be involved in providing direct technical assistance (photographing, drawing up schemes, plans, drawings, sampling for examination, etc.) by the parties to criminal proceedings during the

pre-trial investigation and the court during the trial»[2]. The same article outlines the rights of the specialist and the duties assigned to him.

Based on the procedural status of the investigator as the main and independent procedural figure in the pre-trial investigation, the specialist should be considered in terms of his or her auxiliary status in the activity of the subject of investigation. The investigator may involve any specialist, depending on the type of specialist knowledge required in the conduct of any particular investigative action. The main criterion for the selection of specialists to participate in investigative activities is the availability of relevant specialist knowledge.

Forensic investigators are most often involved in criminal experts, who are employees of the pre-trial investigation bodies of the National Police or the Ministry of Interior's Expert Service. According to the Instruction on the procedure for involving police officers and the Expert Service of the Ministry of Internal Affairs of Ukraine as specialists to participate in the inspection of the scene, approved by the order of the Ministry of Internal Affairs of Ukraine dated 03.11.2015 No. 1339, specialists are «forensic inspectors, criminal investigators forensic inspectors, forensic technicians, and in the case of the creation of sectors of forensic technical support of investigative actions – heads of these sectors, which are part of the of the pre-trial investigation bodies, and the staff of the Ministry of the Interior's Expert Services within the Specialized Mobile Laboratory, who have specialized knowledge and can advise during the pre-trial investigation on issues requiring special knowledge and skills involved in assisting technical assistance proceedings during the pre-trial investigation»[3].

[2] Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-17. URL: http://zakon4.rada.gov.ua/laws/show/4651-17.

[3] Про затвердження Інструкції про порядок залучення працівників органів досудового розслідування поліції та Експертної служби Міністерства внутрішніх справ України як спеціалістів для участі в проведенні огляду місця події : наказ МВС України від 03.11.2015 № 1339. URL : https://zakon.rada.gov.ua/laws/show/z1392-15.

A review is an investigation that involves the direct perception of objects in order to identify the trace of a crime and other material evidence, to clarify the circumstances of the event, as well as the circumstances of the case[4]. The review is one of initial, unique and irreplaceable investigative action. When inspecting the scene, they look at all objects that may be relevant to the crime, depending on the particular investigative situation, the investigator's internal conviction. Therefore, the informative nature of the investigative review is much higher than other investigative actions.

The review is governed by Articles 237-239 of the Criminal Procedure Code of Ukraine. The general rules and conditions for conducting an investigative review are set out in Article 237: «In order to identify and record information about the circumstances of a criminal offense, an investigator, a prosecutor, conduct an inspection of the area, premises, things and documents». The same article provides for the participation of a specialist in conducting an investigative action and outlines tasks that fall within the competence of a specialist: «In order to obtain assistance on issues requiring special knowledge, an investigator, a prosecutor may invite specialists to participate in the examination. When inspected, an investigator, prosecutor, or on behalf of an expert involved, has the right to make measurements, take pictures, sound or video record, make plans and diagrams, produce graphic images of the site or individual things, make prints and casts, inspect and remove things and documents that are relevant to criminal proceedings». These actions of the investigator and the specialist are carried out to solve the tasks of the inspection in order to establish the circumstances of the crime. Depending on the type of crime, the circumstances to be determined, investigated and proved are specific, but the most typical of them determine the following: whether the crime occurred; whether the crime was committed where the scene was inspected; what are the ways of entry of persons to the scene, ways of their departure, vehicles, where the traces indicate, which can be used to organize the persecution; the number of persons present at the scene,

[4] Криміналістика: Підручник для студентів юрид. спец. вищих закладів освіти / Глібко В.М., Дудніков А.Л., Журавель В.А. та ін. / За ред. В.Ю. Шепітька. К.: Видавничий Дім "Ін Юре", 2001. С. 217.

their characteristics; during which time the event participants were at the scene; the time of the crime; which point of the territory or premises being inspected is the scene of the incident in which the offender and the victim were injured at the time of the personal injury; what derivative actions were taken at the scene (hiding or tampering with the tracks); what traces of the scene remained on the offender and others. Most of these problems can be solved only after a thorough study of the situation of the scene, which is why many experts are involved.

During the examination and exhumation of a corpse (Articles 238, 239 of the Criminal Procedure Code of Ukraine), the presence of a forensic specialist is mandatory, as forensic experts of the Ministry of Health of Ukraine are in practice. Specialist assistance is required at all stages of the investigation in conducting such vigorous investigative activities: inspection (Article 237) – almost mandatory; interrogations (Article 224), search (Article 234), presentation for identification (Articles 228, 229, 230), investigative experiment (Article 240), examination (Article 241), appointment of expertise (Article 242), specimens for examination (Article 245) – if necessary.

Types of specialist assistance are divided into forensic, advisory, methodological and technical. Forensic assistance consists in the preparation, organization and conduct of certain investigative action; detection, fixation, removal of evidence, selection of samples for expert study. The methodological assistance is to clarify the conduct of investigative action by a specialist terminology used in a particular field of knowledge, the correct names of the removed objects or parts of them. Sometimes, when drawing up the report, the investigator records this information under the dictation of a specialist. In providing this assistance, the investigator acquires new special knowledge, enhances his professional experience. Technical assistance is to assist the investigator in the use of forensic tools in the process of investigative actions; examination, detection, fixation, removal of physical evidence; drawing up diagrams, drawings and the like. Advisory assistance is expressed in verbal explanations, references on special issues that may arise or arise in the preparation and conduct of investigative actions, and the procedural design of their results. The forensic specialist provides all these types of assistance.

In our opinion, the actions of forensic specialists, depending on the stage of the review, are sufficiently regulated by the Instruction on the procedure for involving police officers and the Expert Service of the Ministry of Internal Affairs of Ukraine as specialists to participate in the inspection of the scene[5]. The main tasks of forensic specialists are contained in clauses 3-12 of the Instruction: «3) at the beginning of the examination the investigator together with the specialists shall determine the boundaries and the procedure for conducting the examination, after which the specialist shall take pictures and video of the scene; 4) after receiving the order of the investigator for the dynamic stage of the inspection of the scene and the task of revealing trace information, the specialists determine the algorithm for finding evidence (traces, things, documents) and methods of their discovery, and then coordinate their actions with the investigator and proceed with his consent location inspection; 5) actions of specialists directly related to the detection, consolidation and seizure of traces and physical evidence are carried out in accordance with the tactics of the scene inspection and the method of investigation of certain types of criminal offenses; 6) a specialist takes a photograph of the object before moving the object (in order to view and discover trace information); 7) during the search and trace detection specialists use the available technical means and first of all use non-destructive methods of their detection, and in case of failure to achieve a positive result – destructive methods of detection of trace information; 8) prior to the use of destructive methods of trace search, specialists must obtain the investigator's consent to their use and determine the priority of traceable information to be detected in order to carry out expert research in laboratory conditions; 9) Specialists inform the investigator about the measures taken and the facts of revealing trace information. During the inspection, the objects are photographed and removed, and the methods of their detection are recorded, with an indication of this in the location inspection report; 10) during fixation of detected trace information in the protocol,

[5] Інструкція про порядок залучення працівників органів досудового розслідування поліції та Експертної служби МВС України як спеціалістів для участі в проведенні огляду місця : затв. наказом МВС України від 03.11.2015 р. № 1339. URL : https://zakon.rada.gov.ua/laws/show/z1392-15

specialists assist the investigator in describing specific traits (type and number of traces detected, their localization, method of detection); 11) if possible, the traces are removed together with the trace objects. If it is impossible to remove trace information with the object of the carrier, the specialist takes their photographing according to the rules of large-scale photography and making copies (prints and prints) of these traces. All trace information, bearing objects and other objects are packed with the help of a specialist in accordance with the established requirements and passed on to the examining officer; 12) the specialist is responsible for the quality and completeness of the orders received from the investigator or the head of the pre-trial investigation body during the inspection of the scene».

The crime scene specialist should act in close collaboration with the investigator and other members of the investigation team. The interaction of the investigator with the survey participants begins at the preparatory stage before the departure to the scene, which gives an opportunity to find out in advance the composition of the investigation team and the professional capabilities of the staff. In preparation for the inspection of the scene at the invitation of the investigator, the forensic specialist participates in the discussion of available information about the crime event, the procedure of the foreseen actions during the inspection of the scene, expresses his opinion on the expediency of involving other specialists and the use of technical means. Having received information about the event of the crime, the specialist prepares the necessary tools, instruments, reference materials before commencing specific actions and assisting the investigator.

The team leader is definitely an investigator. But in the field of collecting traces and other material evidence is more competent forensic specialist, who has special knowledge that is missing from the investigator. Therefore, the advice of the specialist on the organization, progress and results of work with the trace should be taken into account by the investigator. It is important for a forensic specialist to be tactically competent in constructing their work during the inspection of the scene. Reviewing the venue for each particular event has its own peculiarities, but the work of a forensic specialist is almost always reduced to a predefined algorithm of actions.

First of all, upon arriving at the scene, the specialist is convinced that the organized protection of the scene, together with the investigator, determines the limits of the inspection and takes measures to ensure that no outsiders stay within these limits. Determining the boundaries of the survey is usually carried out simultaneously with the orientation and survey photography. He then, along with the investigator and the notion, who are strictly on the path already traveled by a specialist, gradually bypasses the area within the inspection, identifying, fixing and removing traces and other material evidence from the surface of the floor or soil on which to step and which can be changed or destroyed in the advance of the Investigation Team.

Thus freeing up the corridor to move through the territory of the scene, the specialist, possibly with a person informed about the usual location of objects (the owner of the apartment, a materially responsible person in the store, etc.), bypasses this territory, while finding out which of the objects previously located, missing, customary locations, etc. If it is not possible to use the testimony of the specified persons, the specialist does this work independently, determining the change of position of objects or their absence on visible or visibly visible traces (anomalous location of objects, dusty traces of layers, peeling, broken web, scratches on the surface, etc.). According to the crawl, the specialist, analyzing the traces, signs of movement of persons, objects, etc., makes his own idea of what happened – a model of the event, from which he determines the predicted locations of invisible traces and begins to process all visible, poorly visible and invisible traces that, from his point of view, are relevant to the event of the crime. Identity of detected objects and traces to the event is established during their preliminary study, taking into account their location and positioning, prescription, etc. Consistently working out the territory of the inspection, passing from node to node, the specialist detects, fixes, removes, packs the traces in accordance with established requirements. At the general inspection stage, the forensic specialist, without disturbing the environment, makes orientation, survey and nodal photographs. The tactical tasks of applying the location photograph are determined in consultation with the investigator. The technical parameters of

photography (lighting, exposure selection, etc.) are determined by a specialist.

When conducting a general overview, care should be taken not to disturb the situation, to destroy existing traces and to leave their own. It is strictly forbidden at this stage of the review (static stage) to change the situation of the scene. During the detailed examination phase, the forensic specialist uses the most effective methods and means of detecting, fixing and removing traces and objects. At this stage of the review (dynamic stage), the position of the objects being inspected can be modified and technical means facilitated to detect traces and enhance the contrast of their images can be used.

At this stage of the review, the forensic specialist performs the following actions:

– consistently and comprehensively examines the details of the location of the event, the nodes that were conditionally broken into the event during the general inspection, as well as each detected object and should be separately;

– on the location of the tracks, taking into account the meteorological conditions, etc., determines whether or not the traces were found at the time of the crime;

– when inspecting, take items so as not to damage the traces and leave them, possibly using gloves;

– identifies traces and objects to be deleted;

– measures footprints and objects viewed at the scene;

– determines the techniques and selects scientific and technical means by which traces and objects found at the scene can be secured and removed;

– makes detailed photographing of traces and objects found.

The final stage of the scene inspection is characterized by the fact that the forensic expert helps the investigator to remove, pack, following the precautions, traces and objects found in order to ensure their preservation during transportation for further investigation. The best way to remove traces and objects is to remove them along with the media object. Pursuant to Article 71 of the Criminal Procedure Code of Ukraine, a specialist is acquainted with the report of the investigative action and has the right to make observations subject to entry in the report. When working at the scene, a forensic expert

assists the investigator in drawing up the inspection report by providing him with the following information regarding his work:

– where, on what surface, on which object or substance traces are found;

– indicates the type of trace according to conventional classification (volumetric, surface, static, dynamic, visible, invisible, etc.);

– configuration and size (length, width, depth) of the tracks;

– what objects or parts of objects are left behind;

– characteristic features of trace-forming objects that appeared in the traces;

– if traces are superficial (layering or peeling), what kind of substance (dust, dirt, paint, etc.) they are formed by;

– the location and relative position of the tracks (if any) and the distance between them;

– what damage is found in the traces during inspection;

– methods for detecting, fixing and removing traces with a description of the techniques and methods used.

The description of the traces found must be made in full and in such a way that the description can always distinguish these traces from others.

A forensic specialist may be practically unlimited in time in the course of his / her work at the scene, especially when it comes to reviewing particularly serious crime scenes. However, he can also be put in a tight frame when, for a limited period of time, he is required to take part in several visits to places, so to speak, «ordinary» crimes: theft from apartments, cars and the like. The tactics of his work with traces in such situations are different. In the first case, it fulfills all traces, both unconditionally suitable and those whose suitability or unsuitability can be established only in laboratory conditions, which in its view may be relevant to the event of the crime. Otherwise, in order to save time and still achieve a positive result, he needs to put maximum emphasis on those traces that are almost certainly left behind by the offender and whose suitability is indisputable. These traces can most often be found in the nodal areas of the scene, such as in penetration points.

Forensic experts or doctors are obliged to be involved in the examination of the corpse and may be involved at the discretion of

the investigator in the investigation of serious or moderate bodily injury and other crimes related to harm to human health. In the case of personal injury, most often they are doctors who go to the emergency medical team. They provide medical assistance to victims and sometimes suspects detained at the scene; provide the investigator with primary information about the injuries, their location and the severity. Psychologists may be hired as staff psychologists at the scene by National Police departments or medical doctors to assist the victim at the scene, possibly in a state of shock.

The specialist-cynologist at the scene: 1) in agreement with the investigator determines the boundaries of the inspection of the scene and the procedure for its identification in order to identify the traces and objects that are relevant for the use of a service dog, based on the available information determines the feasibility of its use; 2) take measures to search and apprehend a person who has committed a criminal offense, by using a service dog on odor tracks, things and objects left at the scene, and in order to find traces and objects that are relevant for the detection and investigation of a criminal offense; 3) participates in the blocking of the place of commission of the criminal offense, its inspection, detection, fixing, removal and storage of objects and traces that can be used for the search of the person who committed the criminal offense using a service dog; 4) indicate the places of detection on the way of the service dog's pursuit of objects and things that can be used to search the person who committed the criminal offense with the use of the service dog; 5) informs the head of the investigative-operational group of information about the possible origin of odor carriers (traces, objects) detected at the scene and their use for the detection and investigation of a criminal offense; 6) using the information received, use a service dog to search the person who has committed a criminal offense, following its odor trails; 7) inspect with the help of a service dog the territory and possible places of concealment of the person who committed the criminal offense (attics and basements of adjoining buildings that are not a dwelling or other possession of the person, open storehouses, forest parks, careers, etc.); 8) together with other police officers

involved in the prosecution and detention of persons suspected of committing a criminal offense, use a service dog[6].

Kennel specialists are involved to assist in the search for the offender on the odor trail. Occasionally, there are some items left behind by the suspect that are odor carriers. The involvement of a search dog and a canine dog leads to positive results, especially in small towns and villages. However, unfortunately, the National Police in Ukraine does not make full use of the capabilities of cynologists, as evidenced by the results of the interrogation of investigators.

At the present stage, crime is becoming more professional. Modern crime tools are used, leaving traces that are difficult to detect. Given the complexity of crime investigations in the current context, it is promising to involve not only a forensic specialist but a group of specialists in different narrow-area knowledge fields. Positive is the experience of conducting an inspection of the scene by the US police. The detective works with a group of specialists, which consists of a photographer who takes photo, video shooting; Specialists in the extraction of evidence, depending on their type: trasological, biological, ballistic, etc.; analyst; event reconstruction specialist. Each specialist is certified by their field of activity in specialized institutions, which have the right to train relevant specialists. For example, a specialist photographer receives a certificate from Evidence Photographers International Council, Inc., a specialist typist from the International Association for Identification[7]. These specialists are not police officers and are involved in conducting a site inspection by appointment.

Another argument in favor of the proposal to conduct a site-of-event review by a group of specialists is the improvement of forensic equipment that the investigator is unable to master on his own. Also, their simultaneous application with the drafting of the review protocol

[6] Інструкція про порядок залучення працівників органів досудового розслідування поліції та Експертної служби МВС України як спеціалістів для участі в проведенні огляду місця : затв. наказом МВС України від 03.11.2015 р. № 1339. URL : https://zakon.rada.gov.ua/laws/show/z1392-15.

[7] A Simplified Guide to Crime Scene Investigation. National Forensic Science Technology Center, September 2013. URL: http://www.forensicsciencesimplified.org/csi/how.html.

is almost impossible and impractical. Successful use of modern forensic technology requires not only specialist knowledge but also certain skills. For example, a camcorder is used to capture an event, with continuous video of circular panoramas of the event location. Using this camera at various levels allows you to cover all possible locations of evidence, and software allows you to zoom in and out of objects[8]. In the long run, in our opinion, using the above video footage in general may refuse to draw up a review protocol. Multicopter (quadcopter) equipped with camcorders with appropriate software may be used to capture the situation of a large event location in an open area (such as a place of fire or accident).

2. Involvement of specialists during the search

Another investigation, which in most cases requires specialist help, is search. During the investigation, in practice, there are problems regarding the organization of involvement of specialists in the search, the amount of work performed by him, interaction with the investigator and other participants in the investigation, the limits of the use of specialized knowledge, etc. That is why consideration of these issues is relevant, first of all, for the practice of investigating crimes.

The search is an investigative action, «the content of which is the compulsory examination of premises and structures, areas of the territory, of individual citizens for the purpose of finding and removing items of importance in the case, as well as identifying wanted persons»[9]. The search is conducted in accordance with Articles 233-236 of the Criminal Procedure Code of Ukraine. A specialist is involved with the investigator to assist in the search. The assistance of experts in the course of the search is to facilitate the identification, consolidation and removal of evidence. It manifests itself in the following services: collecting information that helps to

[8] Crime Scene Camera Kits + Reconstruction Software. CSI: 360: веб-сайт. URL: http://www.csi360.net/360-crime-scene-cameras.php (дата звернення 01.05.2019).

[9] Криміналістика : підручник для студ. юрид. спец. вищих закладів освіти / кол. авторів : [Глібко В. М., Дудніков А. Л., Журавель В. А. та ін.] ; за ред. В. Ю. Шепітька. К. : Видавничій Дім «Ін Юре», 2001. С. 290.

prove the identity of the objects found to a specific person; identifying, fixing, and removing traces, objects, and substances that will continue to be the subject of expert study; compilation of orientations (search tables) for searchable objects; application of scientific and technical means (search devices, lamps of UV and infrared illumination, etc.) and in the prevention and prevention of damage to objects, environment and traces as a result of inappropriate handling.

In most cases, forensic knowledge is required to conduct the search, as forensic experts are involved. The scientific literature sometimes focuses on the need to involve in the search of individual specialists, for example, with the possible removal of weapons – specialist ballistics, traces of biological origin – specialist biologist, narcotic drugs – specialist chemist, etc. But in practice, even with careful preparation for the search, it is sometimes impossible to anticipate all the specialized knowledge that may be required and to bring in the necessary specialists in a timely manner. In our opinion, this is not necessary, since forensic science, namely knowledge of forensic techniques, which are considered special, cover a wide range of different industries. The forensic expert involved in the search can remove various traces on his own.

The main task in the activity of a specialist during the search is to find the subject, which is known that he is of interest to the case and probably is in this place. Then inspect the object found, record all traces of the crime, and describe and remove it. Traces on the objects found during the search can be handprints, microparticles of metal, trees on the tools of breakage; residues of substances of biological origin: blood, saliva, epidermis, urinary matter; liquid substances: gasoline, lubricants, foodstuffs on clothing and items used in their abduction; layering of soil and other substances (bricks, cement, coal) on clothing and footwear; the smell of man and the like. Forensic inspectors have the necessary knowledge to extract any of the items or traces identified. An exception is the involvement of explosive technicians in cases of searches with the removal of explosives and devices, as well as with the anticipation of possible passage of approach paths or the site itself.

Let us dwell on some of the problematic moments of the specialist's activity during the search. When removing items during a

search, questions often arise about proving their belongings to the suspect. This generally applies to objects that are prohibited for free use (weapons, drugs, high-power, explosives, etc.), or stolen items. A qualified inspection of the objects discovered during the search will reveal the traces of the perpetrator's or the victim's fingers, microparticles and micro-traces, which can establish the fact of their transfer by a specific person, or storage in the place from where they were stolen. Therefore, it is important to alert the investigative team to the precautionary search prior to the search and seizure of identified items. Sometimes, during the briefing of the group, the investigator does not pay proper attention to the search. The specialist must explain to the attendees the rules of handling search objects, depending on their types.

The results of the search largely depend on the correct determination of the relation of the detected objects to the crime. During the search, the investigator does not always know exactly what particular items can be used in the further evidence, and it is often impossible to determine by external evidence. In this case, the investigator consults with a specialist. For example, these may be devices specifically designed to break obstacles («crowbars», locks), or atypical firearms disguised as household items, etc.

Specialist assistance is also necessary in the selection of objects, which can then be used as specimens in the appointment and conduct of examinations (tracological, technical examination of documents, handwriting, etc.). Yes, handwritten texts belonging to the suspect may be removed, which will then serve as free samples when conducting a forensic examination; printing technique, printers, samples of paper, forms of documents, paints, stamps, which could be used in the forgery of documents – in carrying out technical examination of documents. Among the instruments or tools found, a specialist may find, on certain grounds, the tools of the burglary that will be sent for tracological examination or the weapon or its workpiece, for ballistic examination.

It is traditional to help a specialist in refining the protocol, adjusting the schemes and plans that are being drawn up. Within the limits of his specialist knowledge, he assists the investigator in describing in the protocol the objects and traces to be removed, the peculiarities of their detection, removal and fixation, paying attention

to the means by which they were found; individual characteristics of objects, the names of their individual parts; photo and video features.

The specialist is also involved in photography and video recording. The rules of their conduct are traditional and do not need special discussion. Let us mention only that the most important is the fixation of the moment when the objects and documents are removed, as well as the places of their storage. Given the dynamic nature of the search, its active search orientation, it is advisable to accompany it with video recording. At present, the best option is to consider a combination of technical fixation: video recording with taking pictures of the items being removed. Modern digital photo and video technology enables video capture and photography almost simultaneously, using the same technical means. The investigator acts as the organizer of the search and the leader of the actions of all its participants, he directs the process of conducting the investigative action and at the same time records the progress of its conduct in the record. Therefore, he does not have too much time to use any technical devices, including modern photo, video equipment.

3. Participation of experts in questioning and investigative experiment

The interrogation is the most widespread and important investigative action, but also the most difficult one. The interrogation takes 25% of the investigator's total working time and 80% of the investigator's time spent in conducting the investigative activities[10]. Therefore, it is no coincidence that considerable attention was paid to the problems of questioning.

The success of an interrogation depends on many factors. First of all, from the personality of the main participant of the interrogation – the investigator. From his experience, knowledge, intuition, general and professional culture, and in some cases, a certain talent, the completeness and accuracy of the information obtained about the facts relevant to the investigation depends. The current conditions of counteraction to crime require an increasing skill of the investigator,

[10] Весельський В. К. Сучасні проблеми допиту (процесуальні, організаційні і тактичні аспекти) : монографія. Київ : НВТ «Правник». НАВСУ, 1999. С. 3.

especially in the investigation of crimes in such areas of human activity as industrial production, entrepreneurship, banking, transportation and more. These industries require the use of investigators to investigate not only publicly available information but also specialized knowledge. In today's context of changing the structure of crime and increasing the professionalism of criminals themselves, investigators are increasingly seeking the help of specialists. Involvement of experts during the interrogation facilitates the more effective conduct of the investigative action by obtaining from the interrogated maximum amount of information needed to establish the truth.

During the interrogation, the amount and varieties of special knowledge required are determined by the investigator depending on the type of crime, the person being interviewed, the method of committing the crime, the amount of material evidence collected, etc. The investigator can involve specialists from the preparatory stage. At this stage, it is a matter of examining the specific issues that may arise during the interrogation, determining the range of circumstances to be clarified; study of the interviewee's personality; determining the location, situation, time and manner of the call for questioning; determining the number of participants in the questioning; preparation of necessary materials and choice of technical means of fixation; drawing up an interrogation plan. The investigator can get advice on these issues from a specialist in the preparation for interrogation.

A specialist can assist in formulating questions that may further depend on the course of the investigation. For example, in criminal proceedings for theft from a warehouse, the brackets of the padlock were snacked. The suspect testified that he did it with wire cutters. The investigator did not pay attention to their designs and did not involve the specialist who examined the castle in the questioning. Subsequently, during the search of the suspect's premises, the investigator seized the locksmiths and assigned an expert examination concerning the identification of questions. In the course of the further investigation, it was found out that when committing the crime, railway clippers were used, which the suspect took from his station-mate, a co-conspirator. The negative results of the search and the

appointment of the examination led to a waste of time and effort and an unjustified delay in the investigation.

At the preparatory stage of the interrogation, after deciding to recruit a specialist, the investigator will inform the latter of the interrogation plan. In doing so, the specialist makes adjustments to the plan, which, in his opinion, are appropriate. These may be additional questions regarding the specific knowledge, quantity and location of the technical means of fixation. The tactics of the interrogation are also discussed and the organizational aspects of the specialist's actions are specified: the expected moment of commencement of the actions, their character, the marks of the investigator and his reaction to the actions of the specialist.

Thorough preparation for questioning and consultation with experts often do not eliminate the possibility of being caught in a difficult position, as the respondent's answers are sometimes unexpected for the investigator. In such a situation, one has to interrupt the interrogation, consult again with knowledgeable persons, study the necessary literature, delaying the investigation time, adversely affect the establishment of objective truth in the case, and in addition, contradict the principles and objectives of criminal justice. Therefore, it is advisable to use the assistance of specialists directly during the investigation. By their actions, they assist the investigator in identifying and fixing evidence, namely: to better, more accurately and more fully understand the interrogator who uses special terms in the testimony; Understand the applicable special rules, instructions and other documents; to establish a way of committing criminal acts; suspend false testimony concerning special issues; to record by technical means the progress and results of the interrogation.

The participation of a specialist in the interrogation is required in the following cases:

– very complex provisions should be explored concerning any area of knowledge which the investigator is not able to absorb in the term given for the pre-trial investigation;

– Special Knowledge Interrogation does not apply to difficult situations but relates to episodes of circumstances;

– despite the fact that the investigator has mastered the basic provisions of this field of knowledge, he may find it difficult to find out the details, options and decisions in each of them;

– the future interrogation will relate to the provisions related to specialized knowledge, and the interviewee, according to the investigator, has a very high level of professional training and work experience.

Today, more and more suspects, and sometimes witnesses, refuse to give their testimony during the investigation or trial. This raises the question of the objectification of the information obtained during the interrogation. Therefore, a specialist should be added to this list to clarify the content of the information provided by the interviewee, detail the explained processes and phenomena, individualize the characteristics of certain objects that require the use of specialized knowledge. For example, a person interviewed in detail with the assistance of an explosive technician will be able to describe how and by what means an improvised explosive device was manufactured. The results of an interview with the participation of a specialist engineer-technologist will be more reliable, when the interviewee will explain the essence of technological operations that led to the formation of unnecessary products in case of theft of property.

In the work phase, as a rule, the specialist begins to actively participate in the questioning after finding out the questionnaire to the investigators, explaining the rights and obligations to those present and listening to the testimony of the interviewee in the form of a free story. The specialist listens carefully to his explanation on the merits of special issues and makes notes when necessary, but he does not interfere in the interrogation, even if the interviewee reports deliberately incorrect information. However, if the questioning is conducted in the form of questions and answers, the specialist will often intervene in the questioning after the investigator has found out everything he has planned. The questions are asked by a specialist with the permission of the investigator, and relate not only to the details on which the interviewee reported incorrect information, but also to any information not well known to the investigator, for which special knowledge is required.

Effective tactical methods of interrogation are the presentation during the investigation of objects, documents or other material

evidence removed during other investigative actions. In some cases, it may also be advisable to make known the interrogated information contained in the investigation protocols. During the interrogation, it is possible to announce the findings of the expert reports, the results of individual investigative actions, which indicate the possibility of the interrogated person at the crime scene. In order to implement these tactics, it is advisable to involve a forensic specialist who seized or investigated material evidence or participated in some investigative action.

Presentation of material evidence to a suspect is usually done in order to expose his or her false testimony. When using tactical admission, it is important to show evidence of what can help. Presentation of evidence with the participation of a specialist is more effective, because during the demonstration the specialist can apply the necessary technical means to show certain properties of objects or to study them. For example, it may point to a forgery in the financial statements, explain the method of execution and the mechanism of forgery, and demonstrate its features identified in a previous or expert study. The results of such presentation prompt the interviewee to tell the truth about the circumstances of the forgery, the materials used, their location, the persons who made him or her, their accomplices. Knowing that the testimony can be immediately verified, the person interviewed will try to tell the truth. Demonstration of physical evidence also evokes associative links in the interviewee's memory, prompting him to recall new details and facts.

Activation of associative relationships occurs in the interviewee also during questioning at the scene. Re-perception of the situation can restore the forgotten. Conducting an on-site interrogation does not preclude the interrogated protocol from being presented to the interviewee with applications in the form of diagrams, photo tables, drawings. At this point, the specialist involved in the examination may assist the witness or suspect giving the true testimony, navigate the spot, correctly indicate the direction of the offender's movement or the location of the crime traces. When questioned by a suspect in a conflict situation, a specialist can help to refute the false testimony by

explaining the contents of the protocol and comparing it to the actual situation of the scene.

As an expert in the interrogation, it is sometimes advisable to involve an expert who has carried out the expertise in this case, if its conclusion is presented to the suspect. The specialist explains and argues the specifics of the research process and the conclusions of the examination, the nature of the detected signs of objects, the content of photo tables and other illustrations. For example, in the interrogation of a suspect in the theft of goods by rail – an accomplice of a criminal group who worked as a pickup truck at the station – counterfeit documents were presented for a coal wagon in the train. The bill of lading and the waybill were forged by the signatures of the officials and the text that filled out the form. At the beginning of the interrogation, he categorically denied his involvement in the event. After the expert presented the results of the handwriting examination with the corresponding explanations, which indicated that the text was written in the documents personally by him, and the execution of the signatures by not the persons who had to certify the documents, the interviewee began to give a true testimony.

It is important if the interviewee is able to draw certain objects that were used in the crime. According to the drawing, a forensic specialist can give a preliminary conclusion about the type of weapon or model of the weapon. If the testimonial person has no drawing skills, then a specialist can photograph objects. Immediately thereafter, the specialist will inform the investigator of the characteristics of the used tools or model of the weapon. This information may be used in the investigation.

When questioning witnesses and victims who have remembered and described the perpetrator's appearance, it is advisable to involve a specialist portrait artist, but this is not always possible. In this case, a forensic specialist is involved, who will help to describe the criminal's appearance by drawing up a composite portrait. This is especially effective in a conflict-free situation where psychological contact with the interrogated by the investigator is established. The resulting image may be attached to the proceedings in addition to the interrogation protocol.

In addition to the positive impact of specialist involvement on the effectiveness of the interrogation, and hence the effectiveness of the entire investigation, the specialist has traditionally provided technical assistance. Sound information is essential for interrogation, so practically no interrogation photography is used. Sound and video recording are especially important. It is advisable to use audio, video recording when conducting certain types of interrogation: a minor, interrogation with the assistance of a translator, etc. The purpose of the application during the interrogation of audio and video recording is as follows: a) ensuring the completeness of fixation of what the interviewee reports; b) refutation of allegations of falsehood in the recording of testimony; c) a deterrent effect on the change of position.

The most effective, especially during complex interrogations, is video recording. It not only allows you to hear the statements of the interviewee, but also to monitor his or her reaction, and can also solve a number of problems related to attempts to challenge the results of the interview. Yes, in practice it is often possible to encounter a refusal during the trial of testimony previously given during the interrogation. Reasons for such refusals are references to the influence of law enforcement agencies either before or directly during the interrogation or the interrogation of a person in temporary mental disorder. When watching a video, it becomes immediately apparent that there was a physical impact during the interrogation, if any. According to the same videos, it is possible to assign a psycho-psychiatric examination to determine the presence and consequences of psychological influence on the part of the persons conducting the investigative (search) action and present during its conduct. In the same way, by the manner of language and behavior while giving testimony, one can conclude that there are any forms of influence prior to the initiation of investigative (investigative) action or the state of temporary mental disorder of the interviewee.

Conducting an investigative experiment as a separate investigative action is envisaged by Article 240 of the Criminal Procedure Code of Ukraine, which states that «in order to verify and clarify information relevant to establishing the circumstances of a criminal offense, the investigator, the prosecutor shall have the right to conduct an

investigative experiment by reproducing the action, circumstances, circumstances of a particular event, conducting the necessary experiments or tests»[11]. This article also explicitly refers to the possibility of participation in the conduct of this investigative action of the specialist: «if necessary, the investigative experiment may be conducted with the participation of a specialist. Measurement, photography, sound or video recording, plans and diagrams, graphical images, prints and footprints that can be added to the protocol can be made during the investigative experiment». In most cases, investigators of the National Police are involved in the investigation of crimes.

In forensic science, scientists note different types of investigative experiment depending on its purpose, namely the establishment of:

– possibility of observation, perception of any fact, phenomenon;

– the possibility of carrying out any action under certain conditions;

– the presence or absence of specific professional skills and competences;

– the ability to perform certain actions at certain times;

– the sequence of development of a particular event and mechanism of the crime or its individual elements;

– the limits of the person's awareness of the facts of interest to the investigation[12].

Specialists are involved to assist the investigator when they need to use the specialized knowledge they possess. Specialist assistance is required in the following cases:

– selection of the most appropriate for solving a specific task of the type of experiment;

– planning of the experiment taking into account the optimal tactics of its conduct and the scientific and technical means and methods used;

[11] Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-17. URL: http://zakon4.rada.gov.ua/laws/show/4651-17.

[12] Чаплинський К. О. Тактичне забезпечення проведення слідчих дій : монограф. Д. : Дніпроп. держ. ун-т внутр. справ; Ліра ЛТД, 2010. С. 426–427.

– selection of objects, objects that will be used during the experiment;

– creating special conditions for the experiment;

– recreation of the situation and circumstances of the event for conducting experiments;

– carrying out the most experimental actions to ensure their technical and methodological correctness;

– recording the progress and results of the experiment by taking pictures and / or video recording;

– correct reflection of the progress and results of the experiment in the investigative report;

– evaluation of the results of the experiment.

As evidenced by the practice of investigation of crimes, most often criminal investigators are involved in the investigative experiment. They mainly perform the task of the investigator to fix with the help of photo, video equipment of the course and the results of the investigative experiment. Among others, car mechanics are involved in the investigation of traffic-related crimes (in almost 90% of cases). When investigating computer-related crimes, the appropriate specialists are involved in investigating a person's ability to use certain programs and to perform certain actions using a computer.

Specialist assistance is usually needed during the investigative work phase. However, they may also be involved in the preparatory phase. At this stage of the investigative experiment, specialists are involved in:

– drawing up a plan of investigative experiment, the purpose of which is to check the advanced versions, to compare the data obtained by examination and other investigative actions in case of their inconsistency;

– determination of tactical and technical methods for carrying out the experiment, as a result of which self-defense, a mistake in recognizing a person or object can be established;

– the selection of persons to be replaced in the experiment by the suspect, a witness;

– determination of actions that will help to reveal undetected circumstances of the case, traces of the crime;

– selection of tools, objects, vehicles that will be analogues of real ones;

– production of models, models of criminal assault;

– the selection of scientific and technical means, taking into account the tasks that will need to be solved during the investigative experiment.

The analysis of the criminal proceedings materials and the results of the survey of investigators indicate that from the mentioned possibilities of involvement of specialists at the preparatory stage, they participate only in the selection of tools, objects, vehicles, etc. that can be used during the investigative experiment, or which can serve as analogues valid. In addition, this applies only to complex, repetitive experiments (for example, in cases involving a traffic accident). On the one hand, such statistics are negative because the involvement of specialists in the preparatory phase takes less time both to prepare and to carry out investigative action. However, if the actions of the specialists are able to be performed by the investigator himself or his assistant, it may not be necessary to involve the specialists directly at the preparatory stage. For the more rational allocation of time for the investigator and the specialist, in most cases, it is necessary to limit the involvement of specialist knowledge at the preparatory stage of the investigative action in the form of consultations.

The activity of a specialist during a content experiment consists of two separate types: fixation of the course of the investigative action and detection and removal of traces of crime. Sometimes these actions cannot be performed at the same time. In such cases, it is advisable to involve two specialists. One of the specialists is shooting video. The other detects and removes traces of the crime during the course of the investigation, demonstrates them in front of the camcorder in general form and individual details, conducts their detailed examination and preliminary research if necessary, draws the investigator’s attention to the identified individual features of objects and so on. If necessary, he also takes a photo of the location of the testimony and the detected objects.

The features of the video include the following. At the beginning of an investigative (search) action, the person whose testimony is being examined should briefly explain at what point the event took place and what exactly took place there. Audio recording of readings is important at this stage. It is made on a camcorder, while it is advisable to use a remote microphone. Before moving to the area where the events took place, the video recording is stopped by the investigator's team and resumes upon arrival. From now on, it is recommended to stop video recording, as emphasized by numerous methodological guidelines for the use of video recording in the course of investigative actions. It is possible to move participants over long distances, for example within a village. We have processed more than a hundred videos of on-site testimony. More than half of them have footage depicting a street or a section of the area where investigators are moving, with no trace of a crime, and no event information can be retrieved from the video. Such recordings sometimes last for 15-20 minutes. Of course, such a shooting is done by a specialist for convenience, behind the group of participants, resulting in a corresponding video. While processing the videos, we met even those who had unreasonably recorded the moment of placing the participants in the car and the way of its movement to the scene. In such cases, it is necessary, at the initiative of a specialist, to stop the video recording, to select the location of the new recording in front of the group of participants at one of the central venues of the event, and then to continue shooting again. By doing so, we will get more informative video and save time for acquaintance with the video materials of the investigator, other participants of the investigative action, and further participants of the process – the prosecutor, the defense lawyer, the judge, etc.

The main tactical technique for conducting an investigative experiment in the form of an on-site testimony is a demonstration by a person whose testimony is verified by his own actions «with prejudice». On this basis, an important rule in video-recording of this investigative action is the recording when the story goes beyond the indication of the situation in question. Orienteering and survey photography may be possible before approaching participants. If an

object featured in the previous readings is detected on the route, a street name plate, house name, store name, pillar number, individual tree, etc. must be removed using the camera lens zoom. Also, the object to which the person providing the information to be checked is recorded. At the scene relevant to the event under investigation, the video is recorded according to the venue inspection rules. In addition to recording directly the actions of the person whose testimony is being examined, the investigator's questions and their answers should be recorded. For clarity, it is advisable to have a remote microphone attached to the investigator and the person giving the testimony. The end of the shooting should reflect all the positions of the final part of the protocol. Participants of the investigative (search) action watch the video, after which the film additionally removes the message from the investigator that all participants of the process have watched and listened to the video. Participants in turn indicate that everything is recorded correctly or make comments and additions as needed.

CONCLUSIONS

To summarize, it can be noted that the increase in the number of criminal offenses, the professionalization of crime in Ukraine, requires law enforcement agencies to significantly improve their criminal investigation activities. One of the areas of this activity is the introduction into the process of investigation of modern technical means and methods of collecting and investigating evidence. Today there are separate procedural, technical, methodological and other problems of participation of specialists in carrying out investigative actions. We have considered only some of them. Improving the organizational and tactical foundations of conducting investigative actions with the participation of specialists is a promising area of scientific research.

SUMMARY

The article deals with the problems of participation of specialists in investigative actions relevant to the investigation of criminal offenses today. This problem is related to the introduction into the process of investigating the latest scientific and technological

progress and the scientific and technological means developed on their basis. Specialists are the main subjects of investigation, the rights and duties of which are defined by the Criminal Procedure Code, and which are precisely responsible for the implementation of science and technology in the investigation process.

The most important for investigative investigations are the location inspection, search, interrogation and investigative experiment. The article deals with the actions of specialists in carrying out these actions. Types of assistance of specialists are considered, namely forensic, advisory, methodical and technical activity. Special attention is also paid to the actions of specialists, depending on the stages of the investigative action: preparatory, working and final. Specialist actions aimed at detecting, fixing, and removing traces of crime are considered. The use of technical means is closely linked to the tactical methods of conducting one or another investigative action. Each of the investigative actions examines the technical means of recording evidence, such as the camera and camcorder, as well as the methods of photo and video shooting.

REFERENCES

1. Аверьянова Т. В., Белкин Р. С., Корухов Ю. Г., Россинская Е. Р. Криминалистика. Учебник для вузов. Под ред. Заслуженного деятеля науки Российской Федерации, профессора Р. С. Белкина. М. : Издательство НОРМА, 2000. 990 с.

2. Гончаренко В. И. Использование данных естественных и технических наук в уголовном судопроизводстве (методологические вопросы) : монография. К. : Вища школа, 1980. 160 с.

2. Кримінальний процесуальний кодекс України від 13.04.2012 р. № 4651-17. URL: http://zakon4.rada.gov.ua/laws/show/4651-17.

3. Про затвердження Інструкції про порядок залучення працівників органів досудового розслідування поліції та Експертної служби Міністерства внутрішніх справ України як спеціалістів для участі в проведенні огляду місця події : наказ МВС України від 03.11.2015 № 1339. URL : https://zakon.rada.gov.ua/laws/show/z1392-15.

4. Криміналістика : підручник для студ. юрид. спец. вищих закладів освіти. Кол. авторів : Глібко В. М., Дудніков А. Л., Журавель В. А. та ін. За ред. В. Ю. Шепітька. К. : Видавничій Дім «Ін Юре», 2001. 684 с.

5. A Simplified Guide to Crime Scene Investigation. National Forensic Science Technology Center, September 2013. URL: http://www.forensicsciencesimplified.org/csi/how.html.

6. Crime Scene Camera Kits + Reconstruction Software. CSI: 360: веб-сайт. URL: http://www.csi360.net/360-crime-scene-cameras.php (дата звернення 01.05.2019).

7. Весельський В. К. Сучасні проблеми допиту (процесуальні, організаційні і тактичні аспекти) : монографія. Київ : НВТ «Правник». НАВСУ, 1999. 126 с.

8. Чаплинський К. О. Тактичне забезпечення проведення слідчих дій : моногр. Д. : Дніпроп. держ. ун-т внутр. справ; Ліра ЛТД, 2010. 560 с.

Information about the author:
Pyrih I. V.,
Doctor of Law, Assistant Professor,
Professor Department of Criminalistics,
Forensic Medicine and Psychiatry
Dnipropetrovsk State University of Internal Affairs
72, Haharin av., Dnipro, Ukraine

DOI https://doi.org/10.36059/978-966-397-207-7/123-142

DIRECT IDENTIFICATION OF CRIME BY INQUIRY AGENCY IN THE PROCESS OF OPERATIONAL-SEARCH ACTIVITIES

Sachko O. V.

INTRODUCTION

Information throughout human history has been and remains the driving force of history itself, and, progress, is an important factor in the activity of detecting and investigating crimes, operational investigative measures and the criminal process as a whole.

For millennia, no state could do without truthful information – information about events, phenomena, facts, or about individuals. The means and forms of obtaining such information have become more sophisticated and diverse, and subsequently increasingly filigree, including unspoken intelligence methods.

Since the emergence of a former fugitive in the field of police, the French convict Eugene François Vidock (1811), who was able to bring the whistleblowing and tracking to the rank of science and art at the same time and received the title of «emperor of detectives», content, methods and forms of operational and search activities have changed a lot. On the one hand, electronic tracking and various operational and technical means are increasingly used. On the other hand, investigative activities are increasingly under the control of the law and the state. There has been a tendency for more extensive use of the results of investigative activities directly in the prosecution of criminal cases[1].

As D. Bedniakov rightly points out, criminal activity, which is carefully prepared and conspired, must be confronted with a set of operational search (mostly silent, search) measures and investigative

[1] Тертишник В.М. Гарантії прав і свобод людини та забезпечення встановлення істини в кримінальному процесі України: дис. на здобуття наук. ступеня доктора юрид. наук: спец. 12.00.09 «кримінальний процес, та криміналістика; судова експертиза; оперативно-розшукова діяльність» / В. М. Тертишник. – Дніпропетровск, 2009. – С. 222.

actions, without which it is impossible to ensure the inevitability of the responsibility of criminals.

Operational search activity is a system of public and private search, intelligence and counterintelligence, preventive measures carried out by the bodies of inquiry – subjects of operational and search jurisdiction in accordance with the law and other normative acts, using operative and operational-technical methods and means aimed at solving the problem of finding and recording the actual data on the intelligence and subversive activities and unlawful activities of individuals and groups in order to identify, suspension, disclosure, prevention and prevention of crimes, as well as in the interests of criminal justice and information in the interests of the security of society and the state[2].

Operational-search information is any information received by the operational-search units or specific operational staff in accordance with their competence from any sources and in the form provided by the departmental legal acts, as well as the summary data of these units or specific operational employees, having operational and investigative value[3].

Gutsulyak Y. views operational and search information as confidential factual data about persons, phenomena and processes, objects and documents, facts, events that are lawfully obtained, are obtained during the implementation of the ARD and are of interest to the judiciary. Operational-search information, taking into account the specifics of the ARD, by fixing in a certain way on the material media with the appropriate details that allow them to identify, goes into the concept of the document, after which it concentrates on information systems and matters of operational accounting[4].

The content of the operative-search information is the information contained in it about the prepared, conceived, commenced or committed crime and persons involved in it, it is information about

---

[2] Бедняков Д.И. Непроцессуальная информация и расследование преступлений / Д.И. Бедняков. – М.: Юрид. лит. 1991. – С. 17.

[3] Тертишник В. М. Верховенство права та забезпечення встановлення істини в кримінальному процесі України: Монографія / В.М. Тертишник. – Дніпропетровськ: Дніпроп. держ. ун-т внутр. Справ; Ліра ЛТД, 2009. – С. 192.

[4] Погорецкий Н.А. Использование результатов ОРД в качестве доказательств в уголовном процессе России и Украины: сравнительный анализ / Н. А. Погорецкий // Российский следователь. – 2003. – № 4. С. 45–47.

the ways of committing crimes; signs of criminals, stolen items; the circumstances relevant to the planning and implementation of the crime detection and disclosure measures and to the facilitation of the pre-trial investigation. The value of such information is that it provides an opportunity to identify and discover facts of unobtrusive, latent, hidden crimes, to obtain information about specific persons involved in them, who are usually masked, concealed, conspired and prevented from receiving information about them. The method of obtaining operational information is mostly unspoken, reconnaissance, carried out with the help of special forces, means and methods of operative-search activity, which are carried out secretly by persons interested in counteracting the truth, which allows to obtain the necessary data quickly and effectively[5].

From the analysis of the legislation and the scientific works concerning the operative-search activity and the provisions of the criminal process, related to it, it can be stated that the operative-search activity is a certain system of actions, combined with a common purpose and task, which emerge as an operative-search relationship. but mostly in the interests of the judiciary. Accordingly, operative-investigative activity as an operative-investigative process, having the form of a legal relationship, provided the appearance of facts that indicate the signs of a crime, can turn into a legal criminal procedure.

According to Art. 1 of the Law of Ukraine «On Operational Investigation Activities» the task of the operational investigative activity is to search and record the actual data on the illegal actions of individuals and groups, the responsibility for which is provided by the Criminal Code of Ukraine[6], intelligence and subversive activity of special services of foreign states and organizations for the purpose of termination offenses and in the interests of criminal justice, as well as information in the interests of the security of citizens, society and the state.

---

[5] Гуцуляк Ю. Оперативно-розшукова діяльність та оперативно – розшуковий процес: взаємозв'язок та співвідношення. / Ю. Гуцуляк // Підприємництво, господарство і право. – № 10. – 2002. – С. 107–110.

[6] Гуцуляк Ю. Оперативно-розшукова діяльність та оперативно – розшуковий процес: взаємозв'язок та співвідношення. / Ю. Гуцуляк // Підприємництво, господарство і право. – № 10. – 2002. – С. 107–110.

1. Operational search information and subjects of its receipt

If the classification is based on the principle of correlation of the goals of the operational search activities, other authors write, then there are three types of information:

Information of universal importance: for predicting individual behavior, prevention and disclosure of crimes. This type of information is formed around the factors that affect the operational environment and the personality characteristics of those who, in a certain coincidence, may commit crimes (persons of operational interest). It occurs in connection with criminogenic social phenomena, but along with them reflects objective phenomena that remain neutral for the ARD (eg, description of appearance, hobbies, interests. Circle of communication of the investigated persons).

Criminal justice information is a process of proof. It is generated by the circumstances of the crime and the subsequent actions of the criminals, their accomplices and others. Its content is factual evidence that indicates the event of the crime, the actions of the offender, the circumstances that aggravate or mitigate their guilt, and other categories covered by the subject of evidence. If the purpose of the first type of information regarding the disclosure of crimes is to determine in advance the range of persons who may be criminals, then the purpose of the second type of information is to ensure the identification of persons who have committed or commit specific crimes, to obtain evidence of their guilt. The second class should also include information that enables the search of persons evading the investigation, the court and those who have escaped from custody.

Information, the purpose of which is determined by the needs of operational-search tactics. This type of information provides information about the general operational situation (operational-tactical situation), which should be taken into account when choosing forms and techniques of operational-tactical actions. The characteristics of the persons being inspected, the account of the tactical capabilities of the subsidiary apparatus, the features of counter-measures taken by interested persons, and a number of other factors are taken into account[7].

[7] Горяинов К.К. Оперативно-розыскная деятельность: Учебник. 2-е изд. / К.К. Горяинов, В.С. Овчинский, Г.К. Синилов, А.Ю. Шумилов. – М.: Инфра – М, 2004. – 848 с.

Procedural science faces a very important and difficult task of covering operational activities with well-defined legal frameworks and creating a control procedure.

Nowadays, with the transition from regulation of operative-investigative activity by departmental by-laws to its legislative regulation, both conceptual views on the operative-investigative activity and on its place in the sphere of criminal justice have been changed, research has been carried out on the methods of operative-investigative activity itself as well as its forensic and evidentiary aspects[8].

Meanwhile, the problem of using LDA results as reasons and reasons for making information in the LDR has not been investigated yet. Operational-search activity under the current legislation is carried out by operational units: 1) National Police – units of criminal and special police; 2) the State Bureau of Investigation – internal security, personal security; 3) Security services of Ukraine – counter-intelligence, military counterintelligence, protection of national statehood, special units on fight against corruption and organized crime, operational-technical, internal security, operative documentation, fight against terrorism and protection of participants of criminal justice and employees of criminal proceedings and employees; 4) Foreign Intelligence Services of Ukraine – intelligence intelligence, operational and technical, own security; 5) State Border Service of Ukraine – intelligence agency of specially authorized central executive body for state border protection (agent intelligence, operational and technical security, own security), operative-search units according to specially authorized central executive body of state security and territorial bodies, units for protection of the state border of bodies of state border protection and Maritime security, provision of internal security team, ensuring their own security, operational documentation and operational and technical; 6) State Security Directorate – a unit of operational security for the sole purpose of ensuring the safety of persons and objects subject to state protection; 7) bodies of revenue and fees – operational units of the tax police and units that fight smuggling; 8) bodies and institutions of execution of penalties and remand prisons of the State Penal Enforcement Service

[8] Бедняков Д.И. Непроцессуальная информация и расследование преступлений / Д.И. Бедняков. – М.: Юрид. лит. 1991. – 208 с.

of Ukraine; 9) Intelligence body of the Ministry of Defense of Ukraine – operational, operational-technical, own security; 10) the National Anti-Corruption Bureau of Ukraine – detectives, operational and technical, internal control[9].

The carrying out of operative-search activities by other divisions of these bodies, divisions of other ministries, departments, public, private organizations and persons is prohibited.

According to Art. 8 of the Law of Ukraine «On Operational Investigation Activities» the operational units are entitled to[10]:

1) to interview persons with their consent, to use their voluntary assistance;

2) to carry out controlled delivery and controlled and prompt purchase of goods, objects and substances, including those forbidden for circulation, from individuals and legal entities regardless of the form of ownership in order to identify and document the facts of illegal acts. Carrying out controlled delivery, controlled and operational procurement is carried out in accordance with the provisions of Article 271 of the Criminal Procedure Code of Ukraine in accordance with the procedure established by the normative legal acts of the Ministry of Internal Affairs of Ukraine, the central body of executive power, which ensures the formation and implementation of state tax and customs security, agreed with the Prosecutor General's Office of Ukraine and registered with the Ministry of Justice of Ukraine;

3) raise the issue of inspections of financial and economic activity of enterprises, institutions, organizations irrespective of the form of ownership and persons engaged in entrepreneurial activity or other types of economic activity individually, and participate in their conduct;

---

[9] Адашкевич Ю.Н. Агентурный метод в борьбе с преступностью в зарубежных странах. Организованная преступность / под ред. А.И. Долговой, С.В. Дьякова. – М., 1999. – С. 212–213;

[10] Закон України «Про оперативно-розшукову діяльність» від 18 лютого 1992 р. // Відомості Верховної Ради України. – 1992. – № 22. – Ст. 303; зі змінами відповідно до Законів № 5463-VI (5463-17) від 16.10.2012; – N 1798-VIII (1798-19) від 21.12.2016, ВВР, 2017, N 7-8, ст.50; N 1965-VIII (1965-19) від 21.03.2017, ВВР, 2017, N 16, ст.199; N 2505-VIII (2505-19) від 12.07.2018 } URL: http://zakon.rada.gov.ua/laws/show/2135-12

4) to get acquainted with the documents and data characterizing the activity of enterprises, institutions and organizations, to study them, at the expense of the funds allocated for the maintenance of the units carrying out operational search activities, to make copies of such documents, at the request of heads of enterprises, institutions and organizations – exclusively in the territory of such enterprises, institutions and organizations, and with the permission of the investigating judge in the order prescribed by the Criminal Procedure Code of Ukraine, require documents and data that characterize the activities of enterprises, institutions, organizations, as well as the way of life of individuals suspected of committing or committing a crime, the source and size of their income, leaving copies of such documents and describing the seized documents to the persons in which they are claimed and ensuring their preservation and return in due course. The removal of the originals of the primary financial and economic documents is prohibited except in cases provided for by the Criminal Procedure Code of Ukraine;

5) carry out operations on the capture of criminals, termination of crimes, intelligence and subversive activity of special services of foreign states, organizations and individuals;

6) visit dwellings and other premises with the consent of their owners or residents to find out the circumstances of the crime being committed, as well as collect information about the illegal activities of the persons under investigation;

7) identify and record the traces of grave or particularly grave crime, documents and other objects that may be evidence of preparation or commission of such crime, or receive intelligence, including through the penetration and examination of publicly inaccessible places, housing or other possession of a person according to with the provisions of Article 267 of the Criminal Procedure Code of Ukraine;

7-1) in order to identify and record the actions provided for in Articles 305, 307, 309, 311, 318, 321, 364-1, 365-2, 368, 368-3, 368-4, 369, 369-2 of the Criminal Code Ukraine (2341-14), conduct operations on the controlled commission of appropriate actions. The procedure for obtaining a permit, its period of validity and the procedure for conducting an operation for controlled commission of corruption are determined by the Criminal Procedure Code of Ukraine);

8) perform a special task of disclosing the criminal activity of an organized group or criminal organization in accordance with the provisions of Article 272 of the Criminal Procedure Code of Ukraine (4651-17);

9) carry out audio, video control of a person, removal of information from transport telecommunication networks, electronic information networks in accordance with the provisions of Articles 260, 263-265 of the Criminal Procedure Code of Ukraine (4651-17);

10) seize correspondence, review and seize it in accordance with the provisions of Articles 261, 262 of the Criminal Procedure Code of Ukraine;

11) to observe the person, thing or place, as well as audio-video control of the place in accordance with the provisions of Articles 269, 270 of the Criminal Procedure Code of Ukraine (4651-17);

12) to establish the location of the radio-electronic device in accordance with the provisions of Article 268 of the Criminal Procedure Code of Ukraine (4651-17);

13) have vowel and mute staff and freelance employees;

14) use confidential cooperation in accordance with the provisions of Article 275 of the Criminal Procedure Code of Ukraine (4651-17);

15) to receive information from legal or natural persons, free of charge or remuneration, about crimes committed or committed and about the threat to the security of society and the state;

16) use with the consent of the administration office premises, vehicles and other property of enterprises, institutions, organizations, as well as with the consent of persons – housing, other premises, vehicles and property belonging to them;

17) create and use pre-identified (marked) or false (imitation) means in accordance with the provisions of Article 273 of the Criminal Procedure Code of Ukraine;

18) create and apply automated information systems;

19) to apply the means of physical influence, special means and firearms on the grounds and in accordance with the procedure established by the laws on the National Police (580-19), the Security Service of Ukraine (2229-12), the State Border Guard Service of Ukraine (661-15), the State Guard of state bodies of Ukraine and officials (160/98-BP), Customs Code of Ukraine (4495-17);

20) to address, within the limits of its authority, requests to law enforcement agencies of other states and international law

enforcement organizations in accordance with the legislation of Ukraine, international treaties of Ukraine, as well as the constituent acts and rules of international law enforcement organizations of which Ukraine is a member (Article 8 of the Law of Ukraine "On Operational – search activity).

In the course of these actions, signs of a crime can be directly identified and a variety of pieces of evidence can be obtained (videotapes with a record of the actions of criminals, photocopies, weapons, drugs, recording materials, filming, etc.).

2. Legislative regulation of the use of operational and search tools

The problem is the legal certainty of the envisaged operative-investigative measures and unspoken investigative (investigative) actions, their competition is not ruled out, the imperfection of the blanket way of regulating certain actions, other defects of the legislation that often make it impossible to apply them. For example, the requirements of claim 2) Part 1 of Art. 8 of the ARD Law that "controlled delivery, controlled and operational procurement shall be carried out in accordance with the provisions of Article 271 of the Criminal Procedure Code of Ukraine in accordance with the procedure established by the normative acts of the Ministry of Internal Affairs of Ukraine, the central executive body that ensures the formation and implementation state tax and customs policy, the Security Services of Ukraine, agreed with the Prosecutor General's Office of Ukraine and registered with the Ministry of Justice of Ukraine «is not consistent with norms of the CPC of Ukraine. The CPC of Ukraine has only indicated the possibility of applying this measure, but there are still no provisions governing its implementation. Moreover, such a procedure cannot be regulated by the departmental regulations. After all, according to Part 5. Art. 371 of the CPC of Ukraine, «the procedure and tactics of carrying out controlled delivery, controlled and operational procurement, special investigative experiment, simulating the crime situation is determined by law» and not by departmental instructions.

Regarding the legal certainty of the means of obtaining evidential information, here we have a unique message when the legislator, who would have to do it, adopting the CPC of Ukraine as a complex legislative act, did not do so, postponing this work to virtual other laws of the future, and more Moreover, «it has encroached on the fact

that even the tactics of such actions (which are usually selected depending on the investigative situation on the condition of confidentiality) are now also regulated by law.» What is tactics and how to regulate it the legislator «kept silent».

Moreover, according to Art. 86 of the CPC of Ukraine «Evidence is admissible if it is received in accordance with the procedure established by this Code»[11].

According to Part 3 of Art. 271 of the CPC of Ukraine «during the preparation and conduct of crime control measures, it is forbidden to provoke (incite) a person to commit this crime for the purpose of further exposing it, helping the person to commit a crime that he would not have committed if the investigator had not facilitated it or with for the same purpose to influence her behavior by violence, threats, blackmail. Items and documents obtained in this way cannot be used in criminal proceedings. «

The Law of Ukraine «On Measures to Combat the Illicit Trafficking of Drugs, Psychotropic Substances, Precursors and Their Abuse» provides for such operational-search measures as controlled delivery and purchase. In Art. 5 of this Law provides that "for obtaining evidence of criminal activity related to illicit trafficking in narcotic drugs, psychotropic substances and precursors, employees of bodies (subdivisions) who have been granted the right to carry out operative-search activity, according to the resolution of the head of the relevant body, agreed the prosecutor, is allowed to carry out an operation for the purchase of narcotic drugs, psychotropic substances or precursors – prompt purchase. The procedure for conducting an operational purchase is determined by a normative act of the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, agreed with the Prosecutor General's Office of Ukraine and the Ministry of Justice of Ukraine.

Here, the same methodological error of the application of the blanket method, due to the unsuccessful attempts to regulate the

[11] Тертишник В. М., Сачко О. В., Уваров В.Г. Контроль за вчиненням злочину: зміст, форма та юридична визначеність. Актуальні проблеми вітчизняної юриспруденції. – 2016. – № 4. – С. 132-135. Корнієнко М. В. Доктринальні проблеми інституту негласних слідчих (розшукових) дій / М. В. Корнієнко, В. М. Тертишник // Международный научный журнал «Верховенство права». – 2016. – № 4. – С. 62-68.

operative measures by departmental instructions, which calls into question their legal certainty, compliance with the requirements of Art. 19 of the Constitution of Ukraine, and a clear interpretation of the possibilities of using the results of such actions in evidence.

With the help of operative-search measures the receipt and verification of primary information on the signs of criminal activity of specific persons and groups, on the committed crimes and persons involved in it are ensured; identification of persons aware of crimes, detection of property, money and values obtained by crime, objects, documents and other objects – bearers of evidential information, their preservation; identification of criminals, whereabouts of persons hiding from the bodies of inquiry, investigation and court.

Operational-search information can testify to the preparation of a latent crime, an attempt on a crime, the commission of a latent crime, the phenomena that indicate the continued criminal activity of specific persons, and reveals not only the mechanism of crimes, but also the mechanism of occurrence of traces of such crimes, and thereby possibility of their investigation and disclosure of crime.

It may also be information that constitutes, first, information relating to the formation of the offender's personality, as well as information about the relevant situations in which the offender may be committing the crime; secondly, information about personal qualities and habits is subjectively inherent to that person, which often plays an important role in the commission of a particular crime, as well as the characteristics of a person who has a tendency to commit a criminal act that is within the scope of law enforcement agencies.

According to Zazytskyi V.I., in the context of the provisions of the Law on ARD, "the results of the operative-search activity should be considered the data (reports, information) obtained during the implementation of the operative-search activities, as well as from the confidants and recorded in the materials of the cases of operational accounting. These summaries should reflect the circumstances of the crime and other circumstances relevant to the speedy and full disclosure of the crime by criminal proceedings».[12]

[12] Комментарий к Федеральному закону «Об оперативно-розыскной деятельности» / Отв. ред. А.Ю. Шумилов. – М., 1997. – С.109. Похожее

Such results of the ARD can be used both to detect and prevent a criminal offense, as well as to detain a person directly at the scene of a criminal offense or to detect criminal activity.

For the development of technology for direct detection of crimes by operational investigative measures, today there is an acute problem of improving the legal form of the operational investigative activity itself. Recall that according to Art. 19 of the Constitution of Ukraine «state bodies and bodies of local self-government, their officials are obliged to act only on the basis, within the powers and in the manner provided by the Constitution and laws of Ukraine».

Operational-search activities should be codified and regulated in detail in the Law of Ukraine "On Operational-Investigation Activities". Meanwhile, with the adoption of the CCP in 2012, the tendency to process the methods of ARDs and to create an institute of so-called "secret investigative actions" has revived. Article 263 of the CPC of Ukraine regulates "Removal of information from transport telecommunication networks", Article 264 "Removal of information from electronic information systems", Article 267 "Surveying of publicly inaccessible places, dwelling or other possession of a person", Article 269 "Observation of a person, thing or place".

In Art. 260 of the CCP is defined as follows: "Audio, video control of a person is a form of interference with private communication, which is carried out without its knowledge on the basis of the order of the investigating judge, if there are sufficient reasons to believe that the person's conversations or other sounds, movements, actions related to its activities or location, etc., may contain information relevant to the pre-trial investigation».

Article 270 of the Code of Criminal Procedure of Ukraine "Audio, video control of a place" states the following: "Audio, video control of a place can be carried out during the pre-trial investigation of a serious or especially grave crime and consists in carrying out the concealed fixing of information by means of audio, video recording inside publicly accessible places without the knowledge of their owner, owner or persons present in the place, if there is information that the conversations and behavior of the persons in this place, as

определение результатам ОРД дают В.М. Мешков, В.Л. Попов. См.: Указ. работа. – М., 1999. – С. 45.

well as other events occurring there, may contain information that is meaningful I am for criminal proceedings".

In the scientific literature, interesting suggestions have already been made and substantiated in this regard. Thus, V.M. Tertyshnik rightly proposes to supplement the system of investigative actions with a new procedural form of obtaining evidence «Direct observation»:

"In order to establish the circumstances of the event of the crime, as well as other facts relevant to the case, the investigating body shall, on its own initiative or on behalf of the investigator, on its own initiative or on behalf of the investigator, directly monitor certain events, facts or actions of individuals. direct observation and technical documentation of the facts investigated.

The tasks of direct observation are: detection and disclosure of a crime, study and technical documentation of the circumstances of its commission, fixing traces and other factual data, obtaining the necessary information and providing the conditions for successful precautionary measures and detention of the suspect on the spot.

This investigative action is carried out by visual observation of the actions of the suspects in the preparation, preparation or commission of the crime of persons or by the individual circumstances of the event of the crime, as well as technical documentation of such facts.

Surveillance may be carried out in any place other than the dwelling of citizens and other private property, as well as the territory of enterprises, institutions and organizations and other objects, if it may entail the disclosure of information of a secret nature.

By way of exception, with the consent of the residents of the living quarters and the reasoned decision of the investigator or the body of inquiry on the sanction of the prosecutor, direct observation and technical documentation of the investigated facts may be carried out in the living quarters. Without the consent of the residents of the premises, direct observation in it is not allowed.

With the consent of the owner of the private possession and the reasoned decision of the investigator or the body of inquiry on the sanction of the prosecutor, direct observation and technical documentation of the investigated facts can be carried out in such private possession. Without the consent of the owner of the private possession, direct observation in it is not allowed.

With the consent of the persons occupying the official premises or the reasoned decision of the investigator or the body of inquiry with the sanction of the prosecutor, the direct observation and technical documentation of the investigated facts may be carried out in the official or other premises which is not the private possession of the person.

Where necessary, the inquiry body may invite members of the public to participate in the observation and involve the necessary experts. In the course of the surveillance, the investigating body examines and records the circumstances of the crime and the suspected persons, identifies and attaches traces of the crime and other factual data, uses photography, filming, sound and video, uses optical and other necessary technical means.

Participants in the direct observation shall be warned of the use of the technical means and informed of the results of their use. Appropriate methods shall be used to certify the actual results of the technical documentation.

The protocol on the implementation of direct observation and technical documentation is made in compliance with the requirements of the CPC of Ukraine. The protocol describes everything found in the form in which it was observed, and all the actions in the sequence in which they occurred, as well as in compliance with the requirements of Art. CPC of Ukraine, displays information about the procedure and results of the use of technical means. The results of the technical documentation have the value of an independent type of evidence and are stored in the case.

Persons involved in the surveillance as eyewitnesses to a crime or an investigated event may not be involved in further investigation and are subject to removal, but may be questioned as witnesses. The protocol of direct observation, together with the actual results of the actual documentation, shall be immediately transmitted to the investigator, and if the observation was made prior to the commencement of the preliminary investigation, may lead to the opening of criminal proceedings and be subject to registration together with the appearance of the duty and other allegations and reports of crimes.

The investigator and the investigating authority are obliged to take measures to exclude the possibility of disclosure of secret information or intimate and other data concerning the personal life, honor and

dignity of the person obtained in the process of observation, if they do not contain information about the crime.[13]

Based on the practice of regulating the removal of information from technical channels of communication, both as an investigative action and an operational search measure, as well as the tendency to process the means of ARD and regulate them in the CPC of Ukraine as so-called vague investigative (search) actions, we assume that at this stage it is advisable in the same way to regulate in the above order direct observation and technical documentation as a universal complex nature of the investigative action.

Implementation of operational materials can be carried out by both investigator and operative. However, in all cases, the opening of criminal proceedings should be preceded by joint consideration. In this case, the materials of direct detection by the body of inquiry of the crime, for example, the materials about detected theft, as a rule, are jointly discussed by the investigator and the operative. The investigator has the right to return such materials to the inquiry authority for further examination. In this case, it draws up a written opinion, indicating the circumstances that hinder the opening of the proceedings, as well as the measures to be taken to eliminate the gaps.

CONCLUSIONS

The use of ARD results as an excuse and reason for opening criminal proceedings: the problem of implementing this direction has never been as acute as the issue of proving the use of investigative information. Indirectly, this is confirmed by the topic of scientific discussions[14].

Many scientists have occupied and occupy a position according to which operative-search information may well be realized through the system of motives present in the current criminal procedural law. In particular, on the grounds that it is the direct detection of the crime by

---

[13] Тертишник В.М. Кримінально-процесуальне право України. – Подручник. 5-те вид. доп. і перероб. / В.М. Тертишник – Київ: А. С. К., 2007. – С. 617–623; Тертышник В.М. Непосредственное наблюдение: модель нового следственного действия / В.М. Тертышник // Именем Закона. – Киев, 1993. – № 8. – С. 5-6.

[14] Григорьев В.Н. Обнаружение признаков преступления органами внутренних дел / В.Н. Григорьев. – Ташкент, 1986. – С. 56–59.

a body of inquiry. However, allowing such a realization, they do not deny (and some emphasize) that there is an objective need to separate the results of the ARD into a separate reason for opening criminal proceedings[15].

Article 10 of the Law of Ukraine "On Operational Investigation Activities" states: "The materials of the Operational Investigation Activity shall be used: 1) as a pretext and basis for initiating a pre-trial investigation; 2) to obtain factual data which may be evidence in criminal proceedings; 3) for the prevention, detection, termination and investigation of crimes, reconnaissance attacks against Ukraine, the search for criminals and persons who have disappeared".

One of the questions that is being resolved today by jurists is whether the LDA Law's statement that the LDA results can be a reason and ground for opening criminal proceedings are legitimate (in terms of criminal procedure law)[16]. According to Kalnitsky V.V. and Nikolaev Yu.A., the specified norm is criminal procedure and should not be placed in the Law on ARD. According to them, the provisions of the said law are declarative and serve only to correct the practitioners' legal consciousness.

In the same vein, Zemskaya A.V. thinks: not recognizing the investigative formulation of the Law on ARDs with criminal procedural directivity, she notes that the rule stated in the operative-search law only «serves as a guideline for operative workers, targets them, that they see the prospect of selling the materials they have prepared as legal facts that give rise to criminal proceedings».[17]

In the literature there were also sharply critical comments about the fact that «the results of the ARD can be the reason and the reason ...». Gromov N.A., Gushchin A.N., Frantsiferov Y.V. noticed: «... the same array of information cannot simultaneously be the cause

[15] Попов А.П. Непосредственное обнаружение признаков преступления как повод к возбуждению уголовного дела. – Автореф. дис. ... канд. юрид. наук / А.П. Попов. – Н. Новгород, 1999. – 19 с.

[16] Кальницкий В.В. Возбуждение уголовного дела в системе уголовно-процессуальной и оперативно-розыскной деятельности / В.В Кальницкий, Ю.А. Николаев // Вопросы применения Федерального закона «Об оперативно-розыскной деятельности». – Омск:, 1998. – С. 29.

[17] Земскова А.В. Правовые проблемы использования результатов оперативно – розыскных мероприятий в уголовно-процессуальном доказывании / А.В. Земскова. – Волгоград, 2000. – С. 62-63.

(that is, the reason), and the consequence (that is, the reason) of the occurrence of a certain phenomenon (in our case, the initiation of a case).» And further, "securing in law other than the CCP the law of additional reason to open criminal proceedings is hardly expedient, since the data obtained as a result of operative-investigative activity in their use as an excuse require procedural interpretation[18].

Another problem is seen here, which has a direct bearing on the specificity of the results of the ARD as reasons and grounds for opening criminal proceedings. Conditionally, it can be called a problem of delaying the implementation of the principle of publicity. Although, probably, it is more correct to speak not about the postponement, but about the specifics of implementation of the said principle in certain categories of criminal proceedings.

SUMMARY

The investigative activity is an instrument of providing evidence in criminal proceedings. The role of operative-search information is explained in the paper, the ways of its reception are listed. The role of methods used in the process of operational and search activities is investigated. An important place is occupied with the study of information-criminal and evidential aspects. The subjects of carrying out the search activity of their tasks and responsibilities are described. Means of obtaining evidential information and expediency of codification and regulation of operative-search measures are investigated.

REFERENCES

1. Тертишник В.М. Гарантії прав і свобод людини та забезпечення встановлення істини в кримінальному процесі України: дис. на здобуття наук. ступеня доктора юрид. наук: спец. 12.00.09 «кримінальний процес, та криміналістика; судова експертиза; оперативно-розшукова діяльність» / В. М. Тертишник. – Дніпропетровск, 2009. – 473 с.

[18] Гущин А.Н. Использование оперативно – розыскной информации в уголовно-процессуальном доказывании / А.Н. Гущин, Ю.В. Франциферов , Н.А. Громов // Российский следователь. – 2000. – № 4. – С. 15.

2. Бедняков Д.И. Непроцессуальная информация и расследование преступлений / Д.И. Бедняков. – М.: Юрид. лит. 1991. – 208 с.

3. Тертишник В. М. Верховенство права та забезпечення встановлення істини в кримінальному процесі України: Монографія / В.М. Тертишник. – Дніпропетровськ: Дніпроп. держ. ун-т внутр. Справ; Ліра ЛТД, 2009. – 404 с.

4. Погорецкий Н.А. Использование результатов ОРД в качестве доказательств в уголовном процессе России и Украины: сравнительный анализ / Н. А. Погорецкий // Российский следователь. – 2003. – № 4. С. 45–47.

5. Гуцуляк Ю. Оперативно-розшукова діяльність та оперативно – розшуковий процес: взаємозв'язок та співвідношення. / Ю. Гуцуляк // Підприємництво, господарство і право. – № 10. – 2002. – С. 107–110.

6. Горяинов К.К. Оперативно-розыскная деятельность: Учебник. 2-е изд. / К.К. Горяинов, В.С. Овчинский, Г.К. Синилов, А.Ю. Шумилов. – М.: Инфра – М, 2004. – 848 с.

7. Адашкевич Ю.Н. Агентурный метод в борьбе с преступностью в зарубежных странах. Организованная преступность / под ред. А.И. Долговой, С.В. Дьякова. – М., 1999. – С. 212–213;

8. Закон України «Про оперативно-розшукову діяльність» від 18 лютого 1992 р. // Відомості Верховної Ради України. – 1992. – № 22. – Ст. 303; зі змінами відповідно до Законів № 5463-VI (5463-17) від 16.10.2012; – N 1798-VIII (1798-19) від 21.12.2016, ВВР, 2017, N 7-8, ст.50; N 1965-VIII (1965-19) від 21.03.2017, ВВР, 2017, N 16, ст.199; N 2505-VIII (2505-19) від 12.07.2018} URL: http://zakon.rada.gov.ua/laws/show/2135-12.

9. Тертишник В. М., Сачко О. В., Уваров В.Г. Контроль за вчиненням злочину: зміст, форма та юридична визначеність. Актуальні проблеми вітчизняної юриспруденції. – 2016. – № 4. – С. 132-135.

10.Корнієнко М. В. Доктринальні проблеми інституту негласних слідчих (розшукових) дій / М. В. Корнієнко, В. М. Тертишник // Международный научный журнал «Верховенство права». – 2016. – № 4. – С. 62–68.

11.Комментарий к Федеральному закону «Об оперативно-розыскной деятельности» / Отв. ред. А.Ю. Шумилов. – М., 1997. – С. 109.

12.Похожее определение результатам ОРД дают В.М. Мешков, В.Л. Попов. См.: Указ. работа. – М., 1999. – 444 с.

13.Тертишник В.М. Кримінально-процесуальне право України. – Подручник. 5-те вид. доп. і перероб. / В.М. Тертишник – Київ: А. С. К., 2007. – 848 с.

14.Тертышник В.М. Непосредственное наблюдение: модель нового следственного действия / В.М. Тертышник // Именем Закона. – Киев, 1993. – № 8. – С. 5–6.

15.Григорьев В.Н. Обнаружение признаков преступления органами внутренних дел / В.Н. Григорьев. – Ташкент, 1986. – 88 с.

16. Попов А.П. Непосредственное обнаружение признаков преступления как повод к возбуждению уголовного дела. – Автореф. дис. ... канд. юрид. наук / А.П. Попов. – Н. Новгород, 1999. – 19 с.

17. Кальницкий В.В. Возбуждение уголовного дела в системе уголовно-процессуальной и оперативно-розыскной деятельности / В.В. Кальницкий, Ю.А. Николаев // Вопросы применения Федерального закона «Об оперативно-розыскной деятельности». – Омск:, 1998. – С. 29–32.

18.Земскова А.В. Правовые проблемы использования результатов оперативно – розыскных мероприятий в уголовно – процессуальном доказывании / А.В. Земскова. – Волгоград, 2000. – С. 62–63.

19.Гущин А.Н. Использование оперативно-розыскной информации в уголовно-процессуальном доказывании / А.Н. Гущин, Ю.В. Франциферов , Н.А. Громов // Российский следователь. – 2000. – № 4. – С. 15–17.

Information about the author:
Sachko O. V.,
Candidate of Law, Associate Professor.
Docent of the Department of Administrative and Criminal Law
Oles Honchar Dnipro National University
72, Haharin av., Dnipro, Ukraine

DOI https://doi.org/10.36059/978-966-397-207-7/143-161

INTEGRATIVE DOCTRINE OF LEGAL ASSISTANCE AND PROTECTION IN THE CRIMINAL PROCESS OF UKRAINE

Tertyshnik V. M.

INTRODUCTION

Ukraine tries to implement a multifaceted and noble idea of the rule of law in public relations, an important component of which is to ensure the rule of law in the field of justice. Judicial and legal reform in Ukraine has made some steps in this direction, but it has not ensured the formation of a holistic doctrine of legal aid and protection.

The norm «Exclusively a lawyer shall defend against criminal charges» (article 131-2) is fixed in the Constitution of Ukraine by the newly elected Parliament of Ukraine, under the slogans of abolishing the monopoly of lawyers to perform the functions of protection and legal assistance in 2019. On the one hand, the «advocate's monopoly» in criminal proceedings leaves unchanged and, on the other hand, the concept of «prosecution» in the law is insufficiently legally certain, because in the pre-trial stages of criminal proceedings against persons who are held to responsible, the act of notification of suspicion is done. So the question about subjects of protection from the ongoing public act of suspicious.

The doctrine of legal aid is a holistic and harmonious system of principles, beliefs, perceptions, ideas, concepts and model rules concerning the formation of the legal Institute and operationalize effective legal assistance to persons entering in any relationship. It is based on intellectual, spiritual, cultural and scientific development of society, state, morality, and the political and ethical culture of a holistic and harmonious system of principles, beliefs, perceptions. It is a system of knowledge, which is the core theoretical and conceptual framework of law-making, law enforcement and the right of interpretation activities, which is aimed at ensuring rule of law in the state.

Legal assistance is activity of lawyers, which is focused on the rule of law in the state and ensuring the protection of individual human rights, implemented in the form of application of the Institute of protection and other types of legal assistance, the contents of which are: implementation of legal advice and clarification; assistance in preparing and submitting applications, petitions, complaints and other legal documents; initiation and participation in the proceedings and a proper record of their progress and results; assist in the evaluation of supplies, reliability and the admissibility of evidence, the analysis of the legality of legal decisions, taking measures to restore violated rights, compensation for damage caused by the offense.

Separate forms of legal assistance are: a) legal advice, which are held by lawyers and representatives of public human rights organizations and other experts in the field of law; b) representation of the victim (article 58 of the Code of criminal procedure of Ukraine) civil plaintiff, civil defendant; a third party (article 63 of the Code of criminal procedure of Ukraine), and the representation of persons, property of whom can be arrested (article 64-2 of the Code of criminal procedure of Ukraine); C) legal assistance to a witness (article 66 of the Code of criminal procedure of Ukraine); d) protection of a suspect, accused, defendant, convicted and acquitted, a person of whom compulsory medical or educational measures are envisaged and person who can be sent in extradition to a foreign state and a person of whom the Institute of rehabilitation in criminal proceedings is applied.

Forms and methods of legal assistance are not exhaustive and they are formed and developed, they need a clearer legal certainty.

Taking into account the trends of educational reform, multi-level education system and the formation of master's programs today it is advisable to provide a separate discipline «Legal assistance and protection» in the curricula for masters, the content of which would include both legal and organizational, forensic and psychological aspects of providing professional legal assistance and protection. Accordingly, the components of this discipline can be «legal assistance and protection in criminal proceedings», as the most complex and multifaceted special part of this discipline. It will be right if the scientific specialty «12.00.09 – criminal procedure and

criminalistics; forensic examination; operational-search activity» is supplemented with the important direction «legal assistance and protection in criminal proceedings».

To improve the mechanisms of legal aid and protection, in our opinion, it is necessary to systematize and codify the existing constitutional norms, international legal acts, legislative norms and legal positions and case-law of the European court of human rights, to develop and adopt a separate code – *«Code of legal aid and protection*».

Protection in criminal proceedings is a kind of legal aid and acts as a legal form of opposition to the prosecution and is carried out by a participant in the criminal process, which is called the defender.

The function of the protection is legal professional activity of specifically authorized to execute it by independent subject of the criminal process – the defender. It is aimed to ensuring the rule of law in criminal proceedings, protection of rights and legitimate interests of the person, who can be brought to criminal liability, denial of suspicion and accusation, the establishment of innocence of a person or the circumstances mitigating her responsibility, rehabilitation of illegally convicted person.

Usually, the exercise of protection in criminal proceedings is often considered in the context of the activities of a lawyer. But the lawyer's activity and the activity of the defender are not identical.

In the modern criminal process, a lawyer, as a representative of a human rights institution, which should do the function of legal assistance, can take part in criminal proceedings in three different statuses: 1) as a defender of a suspect, accused, convicted, acquitted, a person of whom compulsory medical or educational measures are envisaged and person who can be sent in extradition to a foreign state (article 45 Code of the criminal procedure of Ukraine), a person against whom the Institute of rehabilitation is applied in criminal proceedings; 2) as a representative of the victim (article 58 of the Code of criminal procedure of Ukraine) civil plaintiff, civil defendant; a third party (article 63 of the Code of criminal procedure of Ukraine), and as a the representation of persons, property of whom can be arrested (article 64-2 of the Code of criminal procedure of Ukraine); 3) as a legal assistant (consultant) of witness (article 66 of

Code of criminal procedure of Ukraine) –legal assistance or in other words legal legal counsel.

None of the outlined competencies in Criminal procedure law has received a proper systemic legal definition yet. The law has not adequately regulated both the legal aid function as a whole and the protection function, which creates many problems in ensuring proper justice.

Insufficient clear regulation of the function of protection, means and forms of legal assistance is aggravated with existing legal fictions, lack of legal norms, insufficient logic and terminological shortcomings of the law, they reduce the effectiveness of all criminal legal activities.

It is logical in the Code of criminal procedure of Ukraine to abandon the logic of the concept according to which «the defender uses the rights of the person who is protected by him», and the representative with «rights of the person who is represented by him». This concept has not found continue to provide legal assistance to the witness, the person who came to confession and other participants in the process. Accordingly, there is a need for analogous status of the defender or representative to clearly determine the procedural status of a specialist who will provide legal assistance to other participants in the process, and moreover, in the Code of criminal procedure of Ukraine in certain norms systematically and separately to form the rights in accordance with the «defender», «representative», «legal assistance».

Article 131-2 of the Constitution of Ukraine with the following content became a novelty of law: «advocacy operates for rendering professional legal assistance in Ukraine. The independence of the advocacy is guaranteed. The principles of the organization and activity of the advocacy and the implementation of advocacy in Ukraine are determined with the law. Only a lawyer shall defend against criminal charges».

These provisions create a certain competition of legal norms of national legislation and international legal acts, they are internally contradictory and controversial. First, the requirement of Art. 131-2 of the Constitution of Ukraine that «only a lawyer shall defend against criminal charges» does not mean the establishment of a monopoly of lawyers to perform the function of protection in criminal

proceeding. So according to part 2 of article 42 of the Code of criminal procedure of Ukraine the guilty person is a person, the indictment about him is carried out to the court, according to the article 291 of Code of criminal procedure of Ukraine. Under the current Code of criminal procedure of Ukraine, protection from the act of suspicion is carried out at the pre-trial investigation, and protection from prosecution is possible only in the judicial stage of the process. Consequently, the provisions of the constitutional regulations that «exclusively a lawyer shall defend against criminal charges» do not exclude the protection of a suspect (a person, who has not accused yet) by another lawyer who is not an advocate. Secondly, this novella does not meet the requirements of art. 22 of the Constitution of Ukraine, concerning inadmissibility of restriction of the existing rights and freedoms at adoption of new laws, and also it contradicts the decision of the Constitutional Court of Ukraine[1], the basic international legal acts[2] and case practice of ECHR[3].

The Constitutional Court of Ukraine in its decision on the 30-th of September, 2009 in the case of the constitutional appeal of the citizen Golovan Igor Vladimirovich concerning the official interpretation of the provisions of article 59 of the Constitution of Ukraine (the case of the right to legal aid), determined: 1. The provision of the first part of article 59 of the Constitution of Ukraine «everyone has the right to legal assistance» should be understood as a state-guaranteed opportunity for any person, regardless of the nature of his legal relations with state bodies, local governments, associations of citizens, legal entities and individuals to freely, without undue

[1] Рішення Конституційного суду України у справі за конституційним зверненням громадянина Голованя Ігоря Володимировича щодо офіційного тлумачення положень статті 59 Конституції України (справа про правову допомогу) від 30 вересня 2009 року № 23-рп/2009. URL: http://zakon2.rada.gov.ua/laws/show/v023p710-09/conv

[2] Принципи і керівні положення Організації Об'єднаних Націй, що стосуються доступу до юридичної допомоги в системі кримінального правосуддя, Резолюція Економічного та Соціальної Ради ООН 2012/15 від 26 липня 2012 р.) URL: http://search.ligazakon.ua/l_doc2.nsf/link1/MU13168.html

[3] Рішення Європейського Суду з прав людини від 24 листопада 2011 року «Загородній проти України», у рішенні (Заява № 27004/06) // Офіційний вісник України» від 18 травня 2012 року № 35.

restrictions to receive assistance on legal issues in the scope and forms as he requires; 2. A person during interrogation as a witness in the bodies of inquiry, pre-trial investigation or giving explanations in legal relations with these and other state bodies has the right to legal (juridical) assistance from a person elected at his own request in the status of an advocate, this situation does not exclude the possibility of obtaining such assistance from another person, if the laws of Ukraine don't have restrictions.

The European court of human rights in the case «Zagorodny V. against Ukraine» clearly defined its position. In its decision of the 24-th of November 2011, the European court of human rights found a violation of paragraphs 1 and subparagraph «C» paragraph 3 of article 6 of the Convention, because the applicant's right to free choice of counsel was limited, and the state created a situation incompatible with the principle of legal certainty, which is one of the basic aspects of the rule of law.

The new international legal source of law, such as the «United Nations Principles and guidelines on access to legal assistance in the criminal justice system» (UN Economic and Social Council Resolution 2012/15 of 26 July 2012), should also be guided by the conceptually appropriate provisions for democratic societies in addressing the problem of the range of persons who can serve as a defender in criminal proceedings. Let us take attention, in particular, to its main concepts and provisions aimed at expanding access to legal assistance in criminal justice systems: «the person providing legal assistance is called a» legal counsel», that is, a legal adviser; «States use various forms of legal assistance, it can be public defenders, private lawyers, lawyers by agreement, paralegals and others»; « without prejudice to the rights of the accused, legal assistance should be provided to victims and witnesses at all stages of criminal justice»; «States should recognize and encourage the contribution of the Bar Association, universities, civil society and other groups and institutions in the provision of legal aid»; in order to facilitate the functioning of the national legal aid system, if it is necessary, States should, take measures to:.. «to enable paralegals to provide the forms of legal assistance permitted by domestic law or practice to arrested, detained, suspected or accused persons of a

criminal offence, in particular in police stations or other places of detention.»..»[4].

First of all, in the Code of criminal procedure some gaps should be removed on the definition of the status (including the right to protection) about following persons: a) persons appearing to confess; b) persons, who actually became under investigation because of registered statement about the crime, but he is not detained and has not reported about suspicion yet (has not received the status of a suspect); C) persons who have committed socially dangerous acts, but have not reached the age of criminal responsibility; g) persons who have committed socially dangerous acts in condition of insanity and in respect of which the investigation is being carried out.

In this aspect, the criminal procedure legislation of Germany was explored. In the Code of criminal procedure of Germany four concepts are applied respectively to stages of process: «verdachtider» – the person concerning whom there are bases for suspicion him in commission of crime; «berschuldigter» – the person concerning whom criminal procedural production is carried out;» angeschuldigter «-the person concerning whom the charge is brought;» angeklagter» – the defendant.

We propose to establish a single status – «under investigation» – in respect of all named persons who become parties to criminal legal relations. In the Ukrainian language synonyms of the word «suspicion» are the words «assumption» and «doubt». The «doubtful» participant in the process is the bitter reality of the present. The use of the term «under investigation» would be more correct. It indicates the actual position of the person, and not a subjective view of the situation on the part of the investigator. In addition, it is stylistically neutral and from the whole synonymous series has minimal expression, carries less emotional coloring. It is characteristic that in relation to the stage of the trial, the legislator has long used the term «defendant».

[4] Принципи і керівні положення Організації Об'єднаних Націй, що стосуються доступу до юридичної допомоги в системі кримінального правосуддя, Резолюція Економічного та Соціальної Ради ООН 2012/15 від 26 липня 2012 р.) URL: http://search.ligazakon.ua/l_doc2.nsf/link1/MU13168.html

The use of the term «suspect» should be abandoned, because it has more elements of subjectivity and is not associated with the actual state of the person. And this condition of the specified persons is a condition which is covered by the universal concept- «the person under investigation».

It is necessary, fulfilling the requirements of part 2 of article 5 of the European Convention for the protection of human rights and fundamental freedoms, to restore the concept of a preliminary investigation – « the accused". It defines: «Everyone who is arrested must be immediately informed in a language understandable to him the reasons for his arrest and any charge brought against him».

Therefore, at the pre-trial investigation in respect of persons against whom the proceedings are carried out, two possible statuses must be legally defined – the defendant and the accused, accordingly in court the accused becomes the defendant.

Therefore, in our opinion, the law ought to give such a definition: «Defendants are persons who gave surrender, in respect of whom there are allegations of committing a crime and criminal proceedings, as well as persons, who were detained on suspicion of committing a crime, who has restraint if such persons have not been charged, and also no jurisdiction or young person in respect of which the proceedings are held to solve the issue on application of compulsory measures of educational or medical nature».

The person under investigation should be entitled to primary legal assistance from a lawyer or other legal specialist (the rules of the legal monopoly do not apply to the protection of such persons).

Consequently, it would be appropriate to introduce a new conceptual system of legal aid and protection:

1) Protection of all persons under investigation (including a suspect under modern legislation) may be provided by both lawyers and other specialists in the field of law, in respect of which there are no grounds for recusal.

2) Protection of the accused and the defendant must be done only by a lawyer, who is proposed to be called a judicial attorney and his close relatives can be as representatives of the interests of the defendant.

3) Legal assistance to victims, civil plaintiffs, civil defendants and third parties (article 63 of the Code of criminal procedure of Ukraine)

may be provided by both lawyers and other legal experts and close relatives who may act in the procedural status of representatives of the relevant persons.

4) legal assistance to witnesses, applicants and other participants in the process may be provided by both lawyers and other specialists in the field of law, who may act in the procedural status of professional attorneys (Legal Counsel), that is, persons providing legal assistance outside the application of representation or protection.

Granting the defender the rights of the person whom he protects, the new Code of criminal procedure of Ukraine, is not coordinated with the new Law «on advocacy and advocacy», in the complicated constructions for logical understanding confused idea of parallel lawyer investigation and complicated implementation of the principle of competitiveness of the parties.

The analysis of practice shows that, firstly, the procedural rights granted to a professional defender are not enough for the realization of their tasks and socially useful professional knowledge and abilities, secondly, it is clearly not enough for adequate opposition in an adversarial trial to the prosecution, and thirdly, the rights thus granted are not clearly spelled out in the law with legal fictions and unsuccessful, vague terminology, which makes difficult to effectively use them.

In the list of the rights of the lawyer there are quite problematic definitions. For example, according to paragraph 7 of article 20 of the Law of Ukraine «on advocacy» lawyer has the right «in the manner prescribed by law to ask, receive and withdraw things, documents, copies.» Used here the concept of «withdraw», in contrast to the more correct «receive voluntarily issued» can be interpreted as their forced seizure.

But it should also be noted that the use of certain in article 20 of the Law of Ukraine «on advocacy» rights in criminal proceedings, even «defender-lawyer» is unlikely to be possible. According to part 3 of article 9 of the Code of criminal procedure of Ukraine « laws and other regulatory legal acts of Ukraine, the provisions of which relate to criminal proceedings, must comply with this Code. A law that contradicts this Code cannot be applied in criminal proceedings.» Moreover in the article 1 Code of criminal procedure

contains the requirement – «criminal procedure in Ukraine is determined only by the criminal procedural legislation of Ukraine». In addition, according to part 1 of article 84 of the Code of criminal procedure «evidence in criminal proceedings are factual data obtained in accordance with this Code», and in accordance with part 1 of article 8 of the Code of criminal procedure « evidence is admissible if it is obtained in the manner prescribed by this Code».

Evidence in criminal proceedings may be only things, which were obtained in accordance with the procedure provided with the Code of criminal procedure. And everything else, according to the developers of the Code of criminal procedure of Ukraine – is «materials» of unknown status to science.

It should be noted that such a problem does not arise when a lawyer provides legal assistance in civil proceedings. A simpler concept is defined about admissibility of evidence – «the court does not take into account the evidence obtained in violation of the order established by law» (article 59 of the Code of civil procedure of Ukraine). And article 8 of the Code of civil procedure of Ukraine fairly defines the principle of legality more tolerant in relation to the system of law, fixing the order of this content: «the Court decides cases according to the Constitution of Ukraine, laws of Ukraine and international treaties, which were allowed by the Verkhovna Rada of Ukraine. The court shall apply other normative-legal acts adopted by the relevant body on the basis, within the powers and in the manner established by the Constitution and laws of Ukraine».

This approach is more appropriate. It is necessary to remove artificial barriers to the use in criminal proceedings of factual data obtained outside the criminal process, in the manner prescribed with other laws.

Obviously, in the current Code of criminal procedure of Ukraine artificial formalization of evidentiary law and the institution of protection was done, it contradicts the objective laws of knowledge, logic and natural law, is able to turn the trial in long process, when it will be difficult to see the concern for the fate of man. Criminal procedure legislation and the law on advocacy and legal practice need to be harmonised and substantial improvement.

It is necessary to develop and legally define in the Code of criminal procedure of Ukraine The Institute of evidentiary activity of

the defender and legal attorney-the Institute of independent human rights investigation.

Independent human rights investigation in criminal proceedings is a separate Institute of Criminal procedural law and the activities of legal counsel and attorney based on the evidence. It consists in self-realization in a special procedural form of the system of cognitive, practical and authoritative actions, which due to the subject and objectives of protection and legal assistance to identify sources of evidence, receipt and record the actual data, their verification and clarification belonging to the case, admissibility and reliability, enabling the use to achieve the goal of justice.

The rights of the defender about carring out evidentiary activities should be expanded and described systematically and specifically in the Code of Criminal procedure. The Institute of independent human rights investigation in criminal proceedings should include the possibility of the defender for help by the private detective in getting evidence and using the thus obtained actual data in evidence, a clear definition of the procedure for temporary access to documents, their seizure and conservation. The implementation of an independent human rights investigation in criminal proceedings should be attributed exclusively to the competence of the defender, legal counsel and the Commissioner of the Verkhovna Rada for human rights and it should not be the competence of other representatives of the defense.

The status and rights of the defender must be clearly spelled out in a separate norm in the Code of criminal procedure of Ukraine.

In particular such basic rights of the defender should be prescribed in this norm:

– to have a confidential face-to-face meeting with the detained person under investigation before his first interrogation and to provide him with the necessary legal advice, and after the first interrogation-to have a meeting with the defendant without limitation of their number and duration;

– to be present at interrogations of the client and also at implementation of other investigative actions which are carried out with his participation or at his request;

– to appeal with lawyer inquiries, including concerning receipt of copies of documents, to public authorities, local governments, their

officials and officials, the enterprises, establishments, the organizations, public associations and also physical persons (by consent of such physical persons);

– to get acquainted with the necessary documents and materials for advocacy at enterprises, institutions and organizations, except those ones which contain information with limited access;

– to collect evidentiary information which is not prohibited by law;

– to request and receive voluntarily issued audio-video materials, electronic and other material carriers of evidentiary information, copies of documents, to make copies of documents, to interview persons with their consent;

– to use technical means, including for copying the materials of the case in which the lawyer is defender, representer or provides other types of legal assistance, to record the procedural actions in which he participates and to record the course of the court session in the manner prescribed by law;

– to contact with experts and receive written opinions of specialists, experts on issues requiring special knowledge;

– to prepare and to submit applications, complaints, petitions and other legal documents and to submit them in accordance with the procedure established by law.

Feature of activity of the defender in criminal process consists on receiving from the client the data which would not report to other person under any circumstances. The lawyer, in general, as well as the defender, in particular, is obliged to keep equally secret both the information received from the client and information about the client.

Certain guarantees of the defender should be determined in the Code of criminal procedure of Ukraine. It will be justified to note that lawyer has all guarantees, which are provided by Article 23 of the Law of Ukraine «on advocacy».

Granting a witness the right to use the help of a lawyer (article 66 of the Code of criminal procedure of Ukraine) does not solve the problem of providing him with effective legal assistance. The lawyer is the representative of the legal Institute of advocacy and he is only a potential participant in the process and may become the participant in the process only after receiving a certain procedural status, for example to protect a suspect, he receives the status of the defender, to

provide legal support to the victim – status of the representative, and to provide legal assistance to the witness no procedural status, while remaining «just a lawyer.» There is a question- what rights will be used by him and is it admissible here to use the formula which has already been applied by the legislation «the person rendering legal aid-uses the rights of the person whom he helps». The legislator did not give an answer, leaving these questions to the conscience of law enforcement practice and legal science.

The solution of the problems we see in the need to supplement criminal procedure doctrine with the theoretical model of the Institute of legal attorney and, accordingly, to supplement the Code of criminal procedure of Ukraine with a norm «legal assistance by legal attorney».

«Legal assistance to witnesses, applicants, representatives of the legal entity in respect of which the proceedings are carried out, witnesses, pledgers, translators, experts, specialists shall be provided by legal attorneys elected by them at their discretion".

Legal attorney can act as a lawyer or his assistant and other specialist in the field of law, in respect of which there are no statutory grounds for withdrawal from participation in the case.

Legal attorney has the right to:

1) be notified about the procedural status of the person who needs a legal assistance;

2) to get acquainted with the document about the call or other documents about presence of the person in the law enforcement Agency;

3) to provide to the persons to whom the legal aid is provided, consultation on legal questions in enough volume and forms, including confidentially within time, which does not infringe the rights of other persons;

4) to apply for a change in the procedural status of a person, if it does not comply with the requirements of the law;

5) to declare, in the presence of the bases provided by the law, challenge to the detective, the investigator, the prosecutor, the investigating judge, the judge;

6) to apply for the application of security measures provided for by law to the person to whom legal assistance is provided;

7) to be present at carrying out investigative and other procedural actions which are carried out with participation of the person to whom the legal aid is rendered;

8) to explain to the person who is provided with legal assistance the right to refuse to testify and answer questions about himself, his family members and close relatives;

9) during carrying out procedural actions to put questions, to submit the remarks and objections concerning the order of carrying out actions which are brought in the Protocol;

10) get acquainted with the protocols of investigative (search) and other procedural actions performed with his participation and make written comments, clarifications and additions;

11) to apply technical means for fixing of results of procedural actions in which he is participant;

12) to submit evidence to the investigator, prosecutor, investigating judge, court;

13) to object to illegal actions of the detective, the investigator, the prosecutor, the investigating judge, the judge;

14) to provide legal assistance to a person in the preparation of written applications, complaints, petitions or claims, or with the consent of such person to make on her behalf written documents of a legal nature;

15) to file complaints against decisions, actions, inaction of the detective, the investigator, the prosecutor concerning interests of the person to whom the legal aid is rendered.

Legal attorney is obliged: to respect the rights and freedoms of human and citizen; not to impede establishment of the truth; to observe the principle of fair trial and under no circumstances to inform the court obviously incredible or unreliable information; not to disclose without the permission of the investigator, prosecutor, court, pre-trial investigation data and other information which has become known to him in connection with participation in criminal proceedings and which is the secrets protected by the law; to prevent the disclosure in any way of confidential information which has been entrusted to him or has become known in connection with the performance of his duties; to avoid committing acts which would harm the interests of the person assisted or the rights and freedoms of others».

CONCLUSIONS

The implementation of the constitutional foundations of legal aid and protection in criminal proceedings requires a clear definition of the procedural status of the defender, the representative of the person and the legal attorney, the development and adoption of the Institute of independent legal investigation, which should become an independent Institute of criminal procedure law.

SUMMARY

The conceptual problems of formation and development of legal aid and defense institutions in criminal proceedings are analyzed in the article, the doctrinal aspects of these institutions are revealed, the ways of improving and harmonizing legislation, eliminating legal fictions and conflicts, ensuring the effectiveness of defense and legal aid institutions are explained.

REFERENCES

1. Принципи і керівні положення Організації Об'єднаних Націй, що стосуються доступу до юридичної допомоги в системі кримінального правосуддя, Резолюція Економічного та Соціальної Ради ООН 2012/15 від 26 липня 2012 р.) URL: http://search.ligazakon.ua/l_doc2.nsf/link1/MU13168.html

2. Рішення Європейського Суду з прав людини від 24 листопада 2011 року «Загородній проти України», у рішенні (Заява № 27004/06) // Офіційний вісник України» від 18 травня 2012 року № 35.

3. Рішення Конституційного суду України у справі за конституційним зверненням громадянина Голованя Ігоря Володимировича щодо офіційного тлумачення положень статті 59 Конституції України (справа про правову допомогу) від 30 вересня 2009 року № 23-рп/2009. URL: http://zakon2.rada.gov.ua/laws/show/v023p710-09/conv

4. Абламський С. Є., Юхно О. О. *Сучасний стан регламентації повноважень захисника за КПК України 2012 року.* Часопис Національного університету «Острозька академія». Серія «Право». 2016. № 2(14). С. 1–16.

5. Адвокатура України: підручник у двох книгах / за заг. ред. д. ю. н., проф. заслуженого юриста України С. Я. Фурси та

к. ю. н., доцента Н. М. Бакаянової. 2-ге вид. доповн. і перероб. К.: Алерта, 2016. 864 с.

6. Алейников Г. *Про надання права самостійної діяльності адвоката-захисника по збиранню доказів у кримінальному процесі.* Право України. 2002. № 10. С. 100–104.

7. Балацька О. Р. *Окремі проблеми забезпечення адвокатом права на захист в контексті практики Європейського суду з прав людини*. Вісник кримінального судочинства. Актуальні проблеми кримінального судочинства. 2018. № 1. С. 8–5.

8. Бірюкова А. М. *Адвокатура України в умовах глобалізації: монографія*. Київ: Алерта, 2018. 424 с.

9. Біцай А. В. *Участь адвоката в медіації: монографія* ; за заг. ред. д. ю.н., проф. О. Г. Яновської. К.: Алерта, 2017. 260 с.

10. Варфоломеєва Т. В. *Впровадження міжнародних правил адвокатської етики в Україні*. Вісник Академії адвокатури Україні. 1(14). 2009. С. 7–20.

11. Вільчик Т. Б. *Конституційне право на правову допомогу адвоката у країнах Європейського Союзу та в Україні: монографія*. Харків: Право, 2015. 400 с.

12. Головань І. *Правнича монополія або позбавлення конституційного права*. URL: http://blogs.pravda.com.ua

13. Гончаренко В. Г., Гончаренко С. В. *Захист як соціальна доктрина.* Вісник Академії адвокатури України. 2012. Число 1 (23). С. 5–17.

14. Дроздов О., Дроздова О. *Огляд справ щодо іноземних країн, розглянутих ЄСПЛ протягом квітня травня 2016 року*. Вісник НААУ. 2016. № 7-8 (25). С. 61–72.

15. Дубівка І.В. *Правова регламентація участі захисника в кримінальному процесі за законодавством зарубіжних країн*. Юридичний часопис Національної академії внутрішніх справ. 2017. № 1(13). С. 350–360.

16. Заборовський В. В. *Правовий статус адвоката в умовах становлення незалежної адвокатури України: монографія*. Ужгород: Видавничий дім «Гельветика», 2017. 900 с.

17. Зейкан Я. П., Сафулько С. Ф. *Настільна книга адвоката у кримінальній справі (КПК 2012).* Київ: Дакор, 2013. 576 с.

18. Кацавець Р. С. *Судові промови державного обвинувача та адвоката-захисника у кримінальному судочинстві України:*

правові, етичні, логічні та мовні аспекти: Монографія К.: ЦУЛ. 2014. 150 с.

19.Кучинська О. П. *Забезпечення права на захист та кваліфіковану правову допомогу в кримінальному провадженні*. Юридична Україна. 2012. № 4. С. 65–69.

20.Маланчук П. М., Маслак О. В., Воронкова М. Ю. *Актуальні проблеми участі захисника у кримінальному провадженні*. Правові горизонти. 2017. № 3. С. 82–85.

21.Малахова О. В. *Реалізація інституту сприяння захисту у кримінально-процесуальному доказуванні.* Автореферат дис. …канд. юрид. наук. (спец. 12.00.09). Одеса, 2015. 20 с.

22.Маляренко В. Т. *Про сумні тенденції в розвитку інститут захисту в Україні.* Адвокат. 2001. № 1-2. С. 42–75.

23.Маслюк О. В. *Адвокатське розслідування у кримінальному судочинстві: міжнародний досвід та світові стандарти.* Право і суспільство. 2017. № 3. С. 97–101.

24.Михайлова Н. В. *Інститут захисту прав потерпілого за новим КПК України*. Право і суспільство. 2013. № 2. С. 211–216.

25.Моторигіна М. Г. *Сторона захисту в судовому провадженні у першій інстанції. Монографія.* Харків. 2018.

26.Несінов О. Н. *Складові успіху у кримінальному процесі. Книга друга*. Харків: "Видавництво "Права людини", 2019. 624 с.

27.Нестор Н. В. *Запровадження медіації в кримінальному процесі України: проблеми теорії та практики: монографія*. К.: Алерта, 2018. 182 с.

28.Никоненко М. *Деякі питання презумпції невинуватості і права особи на захист в кримінальному процесі.* Право України. 1999. № 4. С. 39–40.

29.Нор В., Войнарович А. *Адвокат як єдиний суб'єкт надання правничої допомоги у судовому провадженні: міжнародний досвід та вітчизняні законодавчі новели*. Law of Ukraine. 2016, Issue 12, p. 9–18. 10 p.

30.Оверчук С. В. *Обмеження права вибору захисника у світлі європейських стандартів.* Часопис Національного університету «Острозька академія». Серія «Право». 2016. № 2(14). . URL:http://lj.oa.edu.ua/articles/2016/n2/16osvsys.pdf.

31.Одинцова І. М. *Інститут самостійного адвокатського розслідування у кримінальному процесі.* Правова позиція. 2016. № 2(17). С. 170–175.

32.Острогляд О. В. *Діяльність захисника в апеляційному провадженні. Навчальний посібник.* Івано-Франківськ: Прикарпатський національний університет імені Василя Стефаника, 2010. 162 с.

33.Письменний Д. П. *Функції обвинувачення та захисту за новим КПК України*. Право і суспільство. 2013. № 2. С. 353–358.

34.Пономаренко Д. В. *Тактичні питання захисту в кримінальному провадженні. Книга перша: практ. посіб*. Одеса: Видавничий дім «Гельветика», 2018. 112 с.

35.Попелюшко В. О. *Функція захисту в кримінальному процесі на сучасному етапі.* Адвокат. 2008. № 8. С. 7–12.

36.Рибалка О. В. *Захисник як суб'єкт доказування в кримінальній справі.* Адвокат. 2011. № 7(130). С. 35–40.

37.Русанова О. Г. *Процесуальне представництво адвоката у кримінальному процесі як гарантія захисту конституційних прав потерпілог*о. Адвокат. 2012. № 2. С. 42–45.

38.Сачко О. В. *Проблеми дієвості інституту захисту в кримінальному процесі*. Актуальні проблеми вітчизняної юриспруденції. 2017. № 2. С. 142–145.

39.Сачко О. В. *Проблеми реалізації верховенства права при застосуванні особливих форм та режимів кримінального провадження. Монографія*. Дніпропетровськ: Дніпровський національний університет ім. Олеся Гончара; Ліра ЛТД, 2018. 404 с.

40.Скрябін О. М. *Участь захисника в окремих кримінальних провадженнях: монографія*. Запоріжжя: Просвіта, 2017. 380 с.

41.Смирнов Є. В. *Статус захисника як суб'єкта доказування у кримінальному судочинстві*. Підприємство, господарство і право. 2014. № 12 (228). С. 82–85.

42.Сопілко І. М. *Місце та роль сучасної адвокатури України в правозахисному механізмі.* Юридичний вісник. 2012. № 1 (22). С. 82-86.

43.Татаров О. Ю., Чернявський С. С. *Участь захисника у кримінальному провадженні: проблеми законодавчого*

врегулювання Вісник кримінального судочинства. 2015. № 2. С. 77–83.

44.Тертишник В. М. *Кримінальний процес України: підручник. 7-ме вид., доповн. і перероб.* К.: Алерта, 2017. 840 с.

45.Тертишник В. М., Одинцова І. М. *Правнича допомога та захист в кримінальному процесі: концепти та колізії правових реформ*. Наше право. 2017. № 4. С. 164–171.

46.Тертишник В. М. *Правнича допомога та захист у кримінальному процесі: Підручник* / За заг. ред. д.ю.н., академіка НАН України Ю. С. Шемшученко. Київ: Алерта, 2018. 480 с.

47.Фіолевський Д. П. *Закон України «Про адвокатуру та адвокатську діяльність». Коментар.* К.: Алерта, 2013. 368 с.

48.Хмелевська Н. В. *Стратегія забезпечення правової допомоги адвокатом в кримінальному провадженні*. Вісник Академії адвокатури України. Том 12. Число 2(33) 2015. С. 193–201.

49.Цимбал-Семенчук І. Ю. *Правовий статус захисника у кримінальному судовому провадженні: національно-правове регулювання*. Науковий вісник Херсонського державного університету. Серія: Юридичні науки. 2013. Вип. 6. Том 2. С. 146–149.

50.Яновська О. Г. *Процесуальні форми протестної діяльності адвоката в кримінальному провадженні*. Право України. 2013. № 11. С. 165–172.

Information about the author:
Tertyshnik V. M.,
Doctor of Law, Professor,
Academician of the Academy of Political Sciences of Ukraine,
Professor of the University of Customs and Finance
2/4, Volodymyra Vernadskoho Str., Dnipro, Ukraine

DOI https://doi.org/10.36059/978-966-397-207-7/161-179

PUNISHMENT AND MEASURES OF RESOCIALIZATION (SOCIAL ADAPTATION) IN JUVENILE CRIME PREVENTION POLICY: COMPARATIVE ANALYSIS

Yuzikova N. S.

INTRODUCTION

The attitude of society towards the criminal behaviour of minors is established at the level of the historical period. Punishment and other measures of a social, rehabilitation corrective nature, were consistent with the level (indicators) of crime. The institute of punishment of minors reflected was stages of development of society and the state.

The problem of crime and the punishment of minors has always attracted the attention of criminologists. Because society connects its present and future with this age group.

It is a constant position that juvenile delinquency remains the most active, defiant and dangerous component of overall crime. The problems of juvenile delinquency prevention have always been particularly acute. Their decision is about security in society. According to research, adult criminals have acquired their first criminal experience, mostly in the juvenile age. Juvenile delinquency is a kind of indicator of the social situation and the level of security in the country.

Increase in juvenile crime, testifies to negative processes in the country, the crisis of punishment, the not effectiveness of preventive measures.

The criminological analysis of juvenile delinquency is:

a) an instrument for isolating criminogenic factors in the juvenile environment and in society;

b) the basis for predicting felonious acts as a whole;

c) the scientific basis for formulating crime prevention policies.

Therefore, the experience of European countries in which juvenile delinquency is minimal is of scientific and practical interest.

The task posed in the title of the article is complex, voluminous and limitless. It is impossible to disclose in the framework of one

scientific publication. Therefore, attention will be focused on the following areas:

a) aims and effectiveness of punishment;

b) implementation of the goals of correction, re-socialization in different types of punishment;

c) principles of juvenile prevention policy

d) foreign experience in preventing juvenile delinquency.

1. Objective possibilities of punishment in the prevention of minor delinquency

Prevention of juvenile delinquency is carried out: firstly, through a criminal law prohibition, which is enshrined in the Criminal Code of Ukraine; secondly, by punishing minor of crime offense**.**

Among the variety of measures to combat minors delinquency, the most common and severe was and remains punishment. The punishment is aimed at punitive effect, correcting the convicted person and preventing the commission of a new crime by both the convicted person (private prevention) and other persons (general prevention) (part 2 of article 50 of the CC of Ukraine).

An acceptable legal and moral environment in society depends on an understanding of the social purpose and significance of the punishment, and on its proper and adequate application. Therefore, the dominant function of punishment is to increase the moral level of citizens of the state and the formation of motivation for law-abiding behavior within the norms and values that prevail in society.

In the system of crime response measures, psycho-corrective security measures, social rehabilitation and compensation measures can be applied on a parity basis. The person guilty of the crime is obliged to bear criminal responsibility, but the forms of implementation of the latter vary – from mandatory restriction of rights to social and personal rehabilitation and re-socialization.

The question of the value of punishment in the prevention of juvenile crime has been a subject of attention since ancient times. There was no clear definition of the place and role of the criminal penalty in the prevention system. In the era of the New Age, scientists paid attention to humanization in law enforcement and preventive practice. So, Charles Louis Montesquieu, John Locke in their works

preferred the education of a new generation and the prevention of offenses over punishing a child for a crime[1].

There is no unambiguous assessment of the role of criminal punishment (stringency or humanity) in preventing and combating crime. Studies of foreign scientists (Hellmani U., Baltzer Ulrikh, John F. Stinneford) indicate the need for humanization of the criminal policy. This is complies with international standards. In addition, the increase in the "prison population" and the acquisition of criminal experience by the persons to whom the punishment is applied contributes to the deterioration of the criminal situation and the safety of society[2,3,4].

Kara, as a form of influence on a minor, fulfills a warning purpose, and does not bring up a person. Punitive and educative impact have a different legal nature. The educational impact is not covered by the objective content of the punishment. It combines with punishment in the process of its implementation. In the absence of educational impact, the purpose of punishment cannot be achieved. Then punishment makes no sense.

The effectiveness of educational impact is ensured with targeted individual punishment. This can be achieved with a differentiated approach to minors. For instance, Margaret Warren classified minors who are imprisoned according, to their level of maturity[5]. During the interview, the level of integration of the minor is determined and a conclusion is made about his social maturity. This became the basis to pick out the following types of personality of a minor:

---

[1] Монтескье Ш.-Л. О духе законов / Ш.-Л. Монтескье. – М. : Наука, 1955.

[2] Хелльмани У. Значение превентивного заключения для практики уголовных наказаний в Германии // Союз криминалистов и криминологов. – 2013. – № 1. – С. 92–95.

[3] Бальтцер Ульріх. Інші заходи кримінально-правового характеру у національному праві Німеччини: від осудного кримінального права до превентивного кримінального права. України власний шлях. Есе німецьких авторів. BWV. Berliner Wissenschafts-Verlag, 2013. – С. 61–65.

[4] John F. Stinneford Incapacitation through Maiming: Chemical Castration, the Eighth Amendment, and the Denial of Human Dignity. University of St. Thomas Law Journal. Volume 3 Issue 3 Spring 2006. P. 559-599

[5] Шнайдер Г. Й. Криминология / Г. Й. Шнайдер ; пер. с нем. ; под общ. ред. и с предисл. Л. О. Иванова. – М. : Прогресс – Универс, 1994. – С. 310-312.

a) an immature conformist who identifies with those who currently have power;

b) a subcultural conformist who agrees with everyone from his group (especially a group of peers);

c) a manipulator artist who undermines the authority of authority and appropriates it to himself.

Such typology is conditional, but can be adapted to the Ukrainian penitentiary system. This can be successfully used for corrective and educative purposes.

Criminologist Joseph f. Shelley analyzes the problem of punishment through public opinion[6]. Public opinion is based on the ancient principle of matching punishment with the heft of the crime. At first glance, the main element is revenge – retribution for a crime and damage.

Professor I.N. Ragimov reveals the nature of the causes of crime, the content, forms and types of punishment. Based on this analysis, it reveals the limits of justice in sentencing and the role of the state in ensuring the rule of law in its implementation[7]. The scientist's analysis of the problem of punishment through history, theology, philosophy, psychology, politics, sociology, mathematics and genetics became the basis for the conclusion about the absence of a "crisis of punishment", and the presence of a "crisis of society" in the fight against crime.

In the process of forming a juvenile preventive policy, a dilemma arises – which devices should be preferred: means of social prevention, correction of behavior, or penalty? It is important to take into account the psychological, physiological, moral and gender, age characteristics of the minor. The criminal law substantiates the consolidation of the specifics of criminal liability and punishment of minors.

The solution to the problem of preventing juvenile delinquency should be concentrated in the following district. The *first* is to direct

[6] Криминология / под ред. Дж. Ф. Шелли ; пер. с англ. – СПб. : Питер, 2003. – С. 156.

[7] Рагимов И. М. Преступность и наказание / И. М. Рагимов. – М. : ОЛМА Медиа Групп, 2012. – С. 85.

efforts towards ensuring the optimal functioning of the system for protecting the rights of children in Ukraine.

The *second* is focusing on protecting and creating conditions for the socialization of the child, linking it with the realization of the social functions of the family, school, and society.

The *third* is to minimize the influence of environmental factors that determine the criminal behavior of minors.

Fourth – to strengthen work with juvenile offenders of the "risk group".

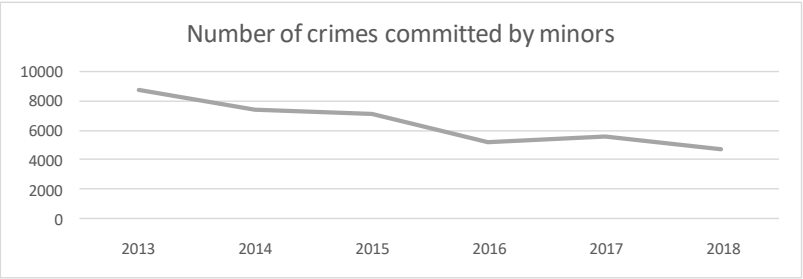
Fifth, to prevent juvenile crime recurrence by using the re-socialization and adaptation of a minor to life in society. Resocialization – the conscious renewal of a convicted person in the social status of a normal member of society; a return to independent, generally accepted life in society. The main means of resocialization are: the procedure for the execution and serving of sentences; socially useful work; social educational work; education; public influence (Article 6 of the Criminal Executive Code of Ukraine). Resocialization is applied taking into account the type of punishment; the personality of the convicted person is taken into account; public danger of crime; motives for committing a crime.

The lack of effectiveness of punishment and the significant use of imprisonment for minors – does not correct the minor, and does not reduce violence in society. Therefore, it does not contribute to the restoration of law and order and the formation of harmony in the state.

Today, to solve the problems of preventing juvenile crime, it is necessary to replace the punitive approach with a new one – a humanistic one. It is necessary to apply scientifically based measures that correspond to the nature and level of criminalization of public relations. These measures should dominate juvenile preventive policies.

2. The unity of correctional and social adaptation elements in the process of implementing certain types of punishments

Statistics show that in Ukraine the number of crimes committed by minors is gradually decreasing. This indicates effective measures of influence and social adaptation in the process of execution of the punishment. Thus, the dynamics of juvenile delinquency is directly related to the effectiveness of punishment and social adaptation**.**



Table

Number of crimes committed by minors[8]

years	2013	2014	2015	2016	2017	2018
number of crimes	8781	7467	7171	5230	5608	4750

Correction and social adaptation are most fully manifested in the process of implementing certain types of punishments. When executing the punishment, independent tasks are solved: the implementation of punitive influence (restrictions and deprivations), correction, prevention and social adaptation

Providing legal protection for the rights of the child who committed the crime is reflected in the legislative consolidation of the specifics of criminal liability and punishment of minors in the Criminal Code of Ukraine. The content of the features of criminal liability and punishment consists in their individualization. Individualization is based on the maximum consideration of the psychological, moral and age characteristics of the child. Highlighting the peculiarities of punishment of minors is consistent with the principles of the rule of law of justice, humanism, minimal criminal repression.

The Criminal Code of Ukraine contains an exhaustive list of types of punishments that can be applied to minors. The main punishments is: 1) a fine; 2) community service; 3) correctional work; 4) arrest;

[8] Статистична інформація про стан злочинності за 2013-2018 роки . https://www.gp.gov.ua/ua/statinfo

5) deprivation of liberty for a fixed term (part 1 of article 98 of the Criminal Code of Ukraine).

Additional punishments include: 1) a fine; 2) deprivation of the right to occupy certain positions and engage in certain activities (part 2 of article 98 of the Criminal Code of Ukraine). Judicial statistics show a small percentage apply, to minors who have committed a crime, additional punishments.

A fine may be imposed on a minor as a *basic* or *additional* punishment. *A fine* is prevalent type of punishment (the proportion is 24% of all types of punishment). The basis for the purpose of the penalty is the presence in the minor's independent income, own funds or property.

Community service is assigned to minors aged 16 to 18 for a period of thirty to one hundred and twenty hours (the proportion is 14% of all types of punishment). A minor performs community service in his free time from studies or main work (no more than two hours a day). When applying community service to minors, there are regulatory restrictions. The Code of laws on labor in Ukraine prohibits certain types of work for persons under 18 years of age (Article 190); a ban on involving minors in night work and weekend work (Article 192).

Correctional work is assigned to minors aged 16 to 18 at the place of work for a period of two months to one year. This type of punishment is rarely assigned to minors (the proportion is 1.8% of all types of punishment). The seldom application of correctional labor for a minor is due to social and economic conditions in Ukraine. It is difficult for minors to find work without work experience, life experience, education and specialty. Control over the execution of this type of punishment rests with the probation authority. In conditions of high unemployment, the state should take care of creating conditions for the implementation of punishment.

The *arrest* consists of keeping a minor who has reached sixteen years of age, in isolation in special institutions. The period of arrest is from fifteen to forty-five days. The arrests apply to minors who have reached the age of sixteen. The punishment is isolation in special institutions for minors. The period of arrest is from fifteen to forty-five days. Stable juvenile arrest rate (less than 2%).

Imprisonment is imposed on minors who have committed a crime for a period of six months to ten years (the proportion is 48% of all types of punishment). Juveniles sentenced to deprivation of liberty are serving their sentences in the special educative institutions. Deprivation of liberty cannot be assigned to a minor who has committed a minor offense for the first time.

The effectiveness of punishment, its preventive nature are directly related to the public danger of the crime. An important component of state preventive policy is the humane component. The release of the minor from punishment is a factor of trust in him and the hope that in the future he will not commit crimes. An alternative to punishment must be sought, not alternative punishment.

The recommendations of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") are aimed at limiting application of the deprivation of liberty to minors (paragraph 19 of the Beijing Rules). In accordance with international standards, Ukraine adopted the «Strategy for the reform of the judicial system, legal proceedings and related legal institutions for 2015-2020».

The «Strategy for the reform of the judicial system, legal proceedings and related legal institutions for 2015-2020» aims to increase the effectiveness of the prevention of recidivism; to rehabilitation of convicts and improvement of the penal system; reduction of punishment related to imprisonment[9].

A set of measures aimed at improving the effectiveness of crime prevention and rehabilitation of convicts includes the following:

- Development and practical application of modern approaches to the management of prisons, modernization of prison infrastructure;
- Improvement of ethical and disciplinary rules and internal control mechanisms in prisons;
- Improving the system for serving sentences by minors, ensuring their right to continue education and vocational tutoring;

[9] Про Стратегію реформування судоустрою, судочинства та суміжних правових інститутів на 2015–2020 роки [Електронний ресурс] : Указ Президента України від 20.05.2015 р. – Режим доступу : http://zakon4.rada.gov.ua/laws/show/276/2015

- The introduction of an individual approach to serving sentences, improving security measures in prisons;
- Combating and preventing against mistreatment of convicts in prisons through external supervision and independent monitoring;
- Improving the legal framework for punishment and probation;
- Reduction in the number of punishment related to deprivation of liberty;
- Education personnel, giving technical base for the functioning of the probation service (p. 5.11 Strategy for the reform of the judicial system, legal proceedings and related legal institutions for 2015-2020).

In Ukraine, a humane system of punishment has been created and is operating, which applies to minors who have committed a crime. The punishment system is in line with international standards for the protection of the rights of the child and juvenile justice.

3. The principles of juvenile preventive policy

The state crime prevention policy consists of three successive stages. The *first* is conceptual ideas (provisions) that reflect the attitude of the state and society towards the criminal behavior of minors. At this stage, there is a process of forming a policy for the prevention of juvenile crime. It should be normatively fixed.

The *second* – characterizes the activities of the state and civil society institutions aimed of the implementation of conceptual ideas (provisions) that are formed at the first stage.

The *third* – reflects the expected results from the practical implementation of conceptual ideas (provisions).

The *last* stage is an indicator of the effectiveness of conceptual ideas (provisions) and forms, methods and means of their implementation. This stage is an indicator of the effectiveness of juvenile crime prevention policies. It is accompanied by highly professional systematic analytical and informational work of crime prevention entities. Analysts determine the level of public confidence in the activities of prevention entities and determine the level of effectiveness of law enforcement practice.

The El Salvador Declaration, adopted at the XII UN Congress on Crime Prevention and Criminal Justice, noted that «states should

allocate sufficient human and financial resources to develop and implement effective anti-crime policies, programs and training» (Twelfth United Nations Congress on Crime Prevention and Criminal Justice (Salvador, Brazil April 12–19, 2010 year)[10].

The object of a preventive policy are crimes committed by minors; risk factors (economic, psychological, cultural, pedagogical, medical, legal). Objects form a preventive policy, and politics, in turn, affects objects. Changes in the objects of a preventive policy determine the effectiveness of this policy. The objects of preventive policy are also: acceptable conditions for the functioning of socialization institutions; activities of socialization agents that form the motivation for law-abiding behavior of a minor.

This approach makes it possible to strengthen social control, identify and take into account the patterns of criminal manifestations and risk factors. These factors form the basis of state preventive policy and determine the necessary vector of influence on its objects.

F. Liszt believed that «criminal policy consists in a systematic presentation of the principles by which the fight against crime is carried out by applying punishment. The principles should be based on the scientific study of crime, its causes and the penalties applied»[11].

In Ukrainian society, the solution to the problem of crime prevention should be based on principles that are reflected preventive policies which minors. This policy is based on legal norms that are aimed at crime prevention. The main principles include the following.

The *principle of identifying the age group of minors* as a special category of the population, requiring increased protection of rights from early childhood to adulthood.

The *principle of the adequacy of means of protecting the rights of the child*, which correspond to modern conditions of social, economic, ideological, cultural and international development of society.

[10] Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Salvador, Brazil, 12-19 April 2010 A/CONF.213/18

[11] Франц фон Лист. Задачи уголовной политики. Преступление как социально-патологическое явление / Франц фон Лист. – М. : Инфра-М., 2004. – С. 34

The principle of adequacy will be able to protect against excessive or insufficient use of means and methods of protecting the rights of the child. This is the creation of centers, organizations; adoption of normative acts; implementation of targeted programs. The wrong approach to juvenile prevention does not protect the rights of the child in society.

The *principle of compliance of juvenile preventive policies with the age characteristics of the child*. When developing a system of measures to prevent juvenile delinquency, it is important to take into account gender and age-related characteristics at different stages of child socialization.

The principle of systematic and multifaceted activities that are aimed at implementing the social functions of the family, school, society and preventing the criminal behavior of minors. This principle includes a coordination system for preventive activities and a single information space for all crime prevention entities. Prevention measures should be considered as a permanent element of the organization of state and public activities. This does not exclude the holding of individual events that will be temporary or one-time. They should be part of the overall system of programmatic measures. This principle determines the development of preventive programs. Even small-scale preventive measures are of prophylactic importance if they are carried out systematically and are widespread.

The principle of the advantage of measures to prevent criminal behavior over punishment (means of criminal repression). An additional function of punishment is associated with a rational system of different forms of implementing the crime prevention strategy (restorative justice, reconciliation, and others). This system is developing within the framework of public and socially institutions of the family, school, enterprises and society. A restorative approach to juvenile justice should be dominant.

The principle of interdependence of state policy to protect the rights and interests of the child from the volume of criminological knowledge about the violation of the rights and freedoms of minors and the crime of minors. The state policy in the field of juvenile justice is enshrined in national legislation and the practice of its application. The practice destination of punishment by courts should

be based on knowledge about the structure, level, dynamics of juvenile delinquency and victimological indicators among minors.

The principle of specialization in the criminal justice system. It consists in preparing subjects of the criminal justice system to work with children of different gender and age groups.

The principle of a regional approach to the formation of preventive measures in the general juvenile delinquency prevention system. It includes:

a) an objective assessment of the regional criminogenic and victimogenic situation among minors;

b) the maximum use of the region's capabilities (material, technical, personnel, information, organizational and managerial resources);

c) coordination of local, targeted (one-time, permanent) programs with state programs and concepts of crime prevention.

The Ukrainian Concord Center presented a roadmap "Building a safe community and preventing crime among children and youth". The roadmap includes effective crime prevention measures. These measures include:

a) training programs for resolving conflict situations among children, youth and grown-up;

b) programs for parents;

c) social programs;

d) improvement of the regulatory framework.

The Ukrainian Concord Center pays special attention to the volume of investments that state institutions invest in preventive activities. For the implementation of program measures, it is important that local authorities cooperate with law enforcement agencies, educators and social services. According to the World Health Organization (WHO), every euro invested in a prevention program saves the state 39 euro[12].

The result of the state policy of preventing juvenile delinquency depends on the level of trust and respect in society for entities that carry out preventive activities. The role and authority of judicial, law enforcement authorities and management is the basis of the

[12] Дорожня карта побудови безпечної громади: попередження правопорушень серед дітей та молоді. – К. : Український Центр Порозуміння, 2010. – С. 3.

effectiveness of preventive activities. Trust and respect for the authorities positively affect the security and development of Ukraine.

In different regions of Ukraine (Vinnitsa, Dnepropetrovsk, Kharkov, Odessa, Kiev, Lvov and others) the project «School Police Officer» was introduced.

The main objective of the project «School Police Officer» is to create a safe environment in secondary schools. This measure is implemented through the implementation of effective crime prevention among students, the use of restorative practices to prevent conflicts, offenses and other negative phenomena

Ukrainian experts, together with their Canadian counterparts, developed guidelines for the School and Police program for educational and preventive classes with students in grades 1–11. This program was approved by the Ministry of Education and Science of Ukraine for use in secondary schools.

To participate in the program «School Police Officer» patrol officers were selected, who underwent training and began to implement the project. Classes are structured as follows: after a short theoretical part, students test the theory in practice. For primary school students (grades 1–4), classes are held in the form of a game. The "School police officer" uses special play sets and dolls. With schoolchildren of middle and senior grades (grades 5-11), various practical situations are worked out in groups. Up to thirty children take part in the lesson. Each pupil participates in a game situation or discussion. This contributes to better absorption of the material.

A separate area of work of «school police officers» is to establish interaction with parents. Predominantly, parents are positive about the conversations of school officers. However, some parents do not understand their status. Parents are fully responsible for the health and well-being of their child. Upbringing methods correspond to modern youth.

4. Foreign experience in preventing juvenile delinquency

For Ukraine, a positive example of the effective prevention of juvenile delinquency is programs and measures that are widely used in foreign countries. The goal of many foreign programs is to provide assistance, advice, educational work to eliminate the factors to determine the criminal behavior of minors.

The Irish Association NIACRO employs early and long-term intervention programs (Garda Juvenile Diversion Programs)[13].

These programs are aimed at supporting children and parents. Program measures are aimed at developing vital skills in minors; helping parents raise their children; correcting of deviant behavior of minors. The Advice Center of the NIACRO Association works with prisoners, their families and children[14].

There is no juvenile justice system in Denmark. For juvenile offenders, measures are more often applied that are not related to isolation from society. Of scientific and practical interest is the collaboration between schools, social services and the police within the framework of SSP (schools, social service and police). SSP aims to reduce youth crime[15]. The SSP collaboration is organized on 3 levels:

- The political-strategic level;
- The coordinating level;
- The implementing level.

These levels ensure the implementation of strategies and programs aimed at reducing juvenile delinquency.

At the political-strategic level, annual strategies and action plans are formed. They have an intersectional character. Collaboration is carried out among representatives of the highest ranks of the police, mayors of municipalities and strategic partners at the regional and local levels.

At the coordination level, the activities of coordinators are carried out, which is aimed at implementing strategies and plans. This is a collaboration of local councils and local police. Municipal authorities are responsible for implementing common strategies and action plans.

At the implementation level, targeted and functional activities of local specialists from schools, the police, and social workers are

[13] Children and the criminal justice system in Ireland [Электронный ресурс]. Режим доступа: http://www.citformation.ie/en

[14] Веб-сайт NIACRO. Evaluation of the Early Intervention Program. [Електронний ресурс]. Режим доступу: http://www.niacro.co.uk

[15] The Danish SSP system: Local collaboration between schools, social service and police [Електронний ресурс]. Режим доступу: https://ec.europa.eu/home-affairs/node/7488_en

carried out. These specialists regularly carry out practical coordination of preventive actions at the local level.

An important place in the prevention of juvenile delinquency is confidence in the subjects of prevention.

In Poland, the «Rodzina Policyjna» Association operates to create an atmosphere of trust and respect for traditions in the work of the police. The Association is a voluntary, self-governing and permanent structure that aims to build public trust in the work of the police (§ 1 of the Statute of «Rodzina Policyjna»)[16].

The activities of the association are based on the principles of:

- protect of the image of the police in the media and society;
- education and popularization of national traditions of the patriotic attitude of police in the modern world;
- providing moral and material support to police officers who are members of the Association, their family members who find themselves in a difficult life situation.

To implement these principles rally and other events are held annually for participants of the Association. A lot of attention is paid to children, especially with disabilities (special seminars, holidays with gifts). The activities of the Association in accordance with § 5 of the charter have the following aims:

- dissemination of knowledge about the police in society;
- the development of ethics and professionalism of the police;
- cooperation with authorities, institutions and organizations that are interested in the activities of the Association;
- fundraising for the activities of the Association;
- care for close relatives of deceased police officers;
- the creation of summer resorts, nursing homes, dormitories, orphanages and more;
- providing free legal advice to members of the Association;
- organization of the cultural and social life of police officers and their families.

[16] Program Zapobiegania Niedostosowaniu Społecznemu i Przestępczosci wśrod Dzieci i Młodziezy. Ministerstwo spraw wewnetrznych i administracji Warszawa, 2003.

The activities of the Police Athletic League (PAL) are aimed at building trust in the police, working with the local population and protecting children from harmful (illegal) drugs[17].

The program has been widely adopted in many American and Canadian police departments. Police officers train teenagers in various sports (basketball, football, American football, etc.). Police help to make with homework. Each policeman who participates in the program has additional responsibilities (along with official policeman responsibilities). The aim of the program is to help socialize the child. Children are socialized through the use of education, recreation, national ideas, and art.

The program includes:

1) benefits (day care);

2) educational information centers;

3) computer literacy;

4) training in the process of outdoor activities. The program inspires young people to socially significant life in society.

Wraparound Milwaukee program (USA) is implemented by the Bureau of Milwaukee Child Welfare (Milwaukee Bureau of Well-Being)[18].

The assistance program consists in individual care for minors who have problems of an emotional, mental and behavioral nature; if need medical attention. Help is provided to children and their families. Participation in the program helps to build relationships with peers; increase the role and family cohesion; minimize the presence of the child outside the home. Participation in the program is for juvenile offenders by court order when the coordinators determine the need for the child to participate in the Milwaukee program.

CONCLUSIONS

The implementation of the state policy in the field of preventing juvenile delinquency should be based on the principles of humanism, openness, priority measures for social education and correction over

[17] Сайт Police Athletic League [Електронний ресурс]. – Режим доступу : http://www.cookcountycourt.org

[18] Wraparound Milwaukee [Електронний ресурс]. – Режим доступу : http://wraparoundmke.com

punishment. The system of preventive policy and punishment of minors who have committed a crime complies with the recommendations of the European Union, UN and UNICEF.

The juvenile crime prevention policy must be implemented taking into account the elements:

1) the priority of educational, upbringing, social measures over punitive measures with forced isolation from society;

2) the widespread introduction of probation rules in the field of juvenile justice (control, guidance, advice, help);

3) mobilization of the resources of the family, educational institutions, society, volunteers in the field of preventing juvenile delinquency;

4) popularization in the media of the positive role of youth in society, minimizing the display of materials related to violence, with drug, to pornography, indignity.

Today's reality indicates the presence of constructive and destructive potential in the younger generation. There can not be totally positive or negative youth. The key point is the degree of deformation of the environment of minors, minimizing the consequences of the negative impact of destructive factors on the behavior of the child and the formation of acceptable conditions for his socialization. All this should be taken into account when punishing minors and applying preventive measures to them.

Foreign programs are aimed at correcting behavior; a mentoring; social support activities; public involvement.

SUMMARY

The study examined the aims of punishment. Achieving the aims of punishment affects the nature and dynamics of juvenile crime, serves as an effective way of general and special prevention. The criminological analysis of the legal nature of punishment, its aims, types and effectiveness has become the basis for determining the role of criminal punishment (rigor or humanity) in the prevention of crime. The effectiveness of certain types of punishments is reflected in modern crime prevention strategies.

The principles of juvenile preventive policy are laid out, which is the basis for the formation of a safe environment and the development of society. The study of juvenile preventive policy focuses on: training

qualified personnel; proper funding; involvement of authorities, public organizations and volunteers in preventive activities.

Foreign programs and preventive practices that are effectively used in Denmark, Ireland, Poland, Norway, Canada, and the USA were investigated. Programs are aimed at building trust at the police; involving society in preventive activities; help to children and families.

The study is aimed at studying the effectiveness of punishment and preventive measures (of social and corrective). The possibilities of implementing foreign experience in preventing juvenile delinquency in national practice are being studied.

REFERENCES

1. Монтескье Ш.-Л. О духе законов / Ш.-Л. Монтескье. – М. : Наука, 1955. – 306 с.
2. Хелльмани У. Значение превентивного заключения для практики уголовных наказаний в Германии // Союз криминалистов и криминологов. – 2013. – № 1. – С. 92–95.
3. Бальтцер Ульріх. Інші заходи кримінально-правового характеру у національному праві Німеччини: від осудного кримінального права до превентивного кримінального права. України власний шлях. Есе німецьких авторів. BWV. Berliner Wissenschafts-Verlag, 2013. – С. 61–65.
4. John F. Stinneford Incapacitation through Maiming: Chemical Castration, the Eighth Amendment, and the Denial of Human Dignity. University of St. Thomas Law Journal. Volume 3 Issue 3 Spring 2006. P. 559–599.
5. Шнайдер Г. Й. Криминология / Г. Й. Шнайдер ; пер. с нем. ; под общ. ред. и с предисл. Л. О. Иванова. – М. : Прогресс – Универс, 1994. – 504 с.
6. Криминология / под ред. Дж. Ф. Шелли ; пер. с англ. – СПб. : Питер, 2003. – 864 с.
7. Рагимов И. М. Преступность и наказание / И. М. Рагимов. – М. : ОЛМА Медиа Групп, 2012. – 304 с.
8. Статистична інформація про стан злочинності за 2013-2018 роки . https://www.gp.gov.ua/ua/statinfo
9. Про Стратегію реформування судоустрою, судочинства та суміжних правових інститутів на 2015–2020 роки [Електронний

ресурс] : Указ Президента України від 20.05.2015 р.. – Режим доступу : http://zakon4.rada.gov.ua/laws/show/276/2015

10. Twelfth United Nations Congress on Crime Prevention and Criminal Justice Salvador, Brazil, 12-19 April 2010 A/CONF.213/18

11. Франц фон Лист. Задачи уголовной политики. Преступление как социально-патологическое явление / Франц фон Лист. – М. : Инфра-М., 2004. – 110 с.

12. Дорожня карта побудови безпечної громади: попередження правопорушень серед дітей та молоді. – К. : Український Центр Порозуміння, 2010. – 25 с.

13. Children and the criminal justice system in Ireland [Электронный ресурс]. Режим доступа: http://www.citformation.ie/en

14. Веб-сайт NIACRO. Evaluation of the Early Intervention Program. [Електронний ресурс]. Режим доступу: http://www.niacro.co.uk

15. The Danish SSP system: Local collaboration between schools, social service and police [Електронний ресурс]. Режим доступу: https://ec.europa.eu/home-affairs/node/7488_en

16. Program Zapobiegania Niedostosowaniu Społecznemu i Przestępczosci wśrod Dzieci i Młodziezy. Ministerstwo spraw wewnetrznych i administracji Warszawa, 2003. – 100p.

17. Сайт Police Athletic League [Електронний ресурс]. – Режим доступу : http://www.cookcountycourt.org

18. Wraparound Milwaukee [Електронний ресурс]. – Режим доступу : http://wraparoundmke.com

Information about the author:
Yuzikova N. S.,
Professor at the Department of Administrative and Criminal Law,
Oles Honchar Dnipro National University
72, Gagarin Ave., Dnipro, 49000, Ukraine

Publishing house “Liha-Pres”
9 Kastelivka str., Lviv, 79012, Ukraine
44 Lubicka str., Toruń, 87-100, Poland

Printed by the publishing house “Liha-Pres”
Passed for printing: December 27, 2019.
A run of 150 copies.