V.I. VERNADSKY TAURIDA NATIONAL UNIVERSITY

THEORETICAL AND PRACTICAL ASPECTS OF MODERN JURISPRUDENCE DEVELOPMENT: THE EXPERIENCE OF EUROPEAN COUNTRIES AND PROSPECTS FOR UKRAINE

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The monograph deals with theoretical and practical aspects of modern legal science development, taking into account the experience of European countries and prospects of Ukrainian legislation development. Some international normative-legal acts governing the issues of human rights protection in various domains of life are considered.

The publication is intended for scientists, lecturers, postgraduates, students, as well as for the general reader.

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INTRODUCTION

The monograph is dedicated to the scientific research of theoretical and practical aspects of the modern jurisprudence development, justifying the new solution of urgent problems, as well as the development of proposals as for improvement of current legislation provisions on this basis and practice of their implementation.

The range of scientific interests among scientists and practitioners is rather diverse and covers issues of international legal cooperation in the field of human rights, the correspondence between international and national law, international cooperation in the fight against crime and international criminal law, international security, the history of international relations, and the constitutional right of foreign states. That is why the group of authors presents new provisions for consideration which can serve for the further development of the science of international, criminal, administrative law, etc.

As for contents, the monograph includes several blocks (sections), but it does not cover the full range of solutions to global problems of jurisprudence development, as a complex social science and a system of knowledge about the development and operation of law and state in their structural unity.

The legal science, as a set of relations appearing between people, has a main task that is the patronage through state and legal institutions for personality development and the ways of obstacle overcoming; effective use of human potential, creation of the conditions for human and civil rights and freedoms exercise. To that end, a comprehensive analysis of European experience is an essential condition for the development of law-making in Ukraine. The general process of integration of legal sciences is the prospects for achievement, systematization and use of knowledge in its unity, integrity and inter-conditionality.

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CONTENT AND TYPES OF PROCEDURAL DISCRETION OF ADMINISTRATIVE COURT OF CASSATION OF THE SUPREME COURT: PRELIMINARY THOUGHTS [1]

Bevzenko V. M.

INTRODUCTION

Administrative Court of Cassation of the Supreme Court (hereinafter referred to as Administrative Court of Cassation, the Court) as well as local administrative courts and administrative courts of appeal based on the Code of Administrative Legal Proceedings of Ukraine (hereinafter referred to as the CAP of Ukraine) have the right to approve judicial decisions (court determinations, resolutions, orders) (Art. 241 of the Code of Administrative Legal Proceedings of Ukraine), that according to this Court are the most suitable for actual circumstances of the administrative case, procedural resolutions, actions, inaction of Legal Proceedings participants, provisions of procedural and substantive legislation[2].

In fact, when the judge of Administrative Court of Cassation in accordance with Art. 31 of the Code of Administrative Legal Proceedings of Ukraine receives a statement of claim, a statement, a petition, a cassation appeal, a revocation, an objection to the applications filed or petitions (Articles 160, 162, 163, 164, 166, 330, 334, 338, 344 of the CAP of Ukraine), he faces not an easy choice as to which procedural decision he should approve. The necessity to make a reasonable choice is objectively inherent in the whole process of considering and resolving an administrative case and all the procedural actions associated with it.

A judge is not just before a choice, having the opportunity to choose one solution from several. The judicial decision is always preceded by the complex, judge's continuous research activity, involving a critical evaluation of actual circumstances of the case, procedural decisions, actions, inaction of the participants in judicial procedure, the local administrative court, the administrative court of appeal, in gathering evidence, comparing them with the actual circumstances of the case and,

[1] Стаття підготовлена з урахуванням національного законодавства станом на 1.11.2018 р.

[2] Кодекс адміністративного судочинства України: Закон України від 06.07.05 р. № 2747-IV (в редакції Закону України від 03.10.17 р. № 2147-VIII). Відомості Верховної Ради України. 2017. № 48. С. 5.

finally, in drawing conclusions that are as much as possible correspond to previously collected information.

Many factors influence the choice of a judge of the Administrative Court of Cassation, such as: actual circumstances of the case, the content of disputed legal relations and their subjects, time of a dispute, legal regulation and the validity of law norms at the time of relations occurrence, judicial practice, and the practice of the European Court of Human Rights.

Almost the first task for a judge of the Administrative Court of Cassation, who is getting familiar with administrative documents, is to determine the limits and scope of actual information and circumstances, to search and select relevant legislation governing the disputed legal relations, and to apply the proper administrative procedural norm. Finally, such analytical activity involves the mandatory formation of accurate, justified, relevant and unambiguous conclusions concerning circumstances, the essence of an administrative case and proper procedural actions of the Court.

The Administrative Court of Cassation has a significant amount of procedural powers for the consideration and resolution of administrative cases stipulated by the current Code of Administrative Legal Proceedings of Ukraine. Accordingly, the court decisions of this Court are numerous and diverse, since they are a form and, consequently, a consequence of the exercise of their powers.

Taking into account the number of court decisions made by the Administrative Court of Cassation, and also in view of the necessity to ensure the proper protection of rights, freedoms, and interests of physical persons (legal entities), there is an objective need for the development and implementation of a uniform algorithm (sequence) for the formation of a justified and correct conclusions by the Court as a result of consideration and resolution of an administrative case, the procedural actions performed.

It seems that the development and implementation of the algorithm (sequence) of justified and correct conclusion formation by the Court depends, in turn, on justification for the implementation of procedural discretion by the Administrative Court of Cassation during the consideration and resolution of the administrative case, performing procedural actions by judicial process participants. Although discretionary

powers are necessary to perform the full range of power functions in modern complex societies, the powers mentioned should not be exercised in an arbitrary manner, since this will lay the foundations for the adoption of substantially unfair, unjustified, unreasonable or oppressive decisions that are incompatible with the notion of the supremacy of law[3].

1. Analysis of the Latest Studies and Publications

The subject of procedural discretion (judicial discretion) is not entirely new for the national science of administrative law and procedure. At one time, its history was already enriched with theoretical and applied achievements and progressive examples of norm-making. The principles of national administrative judicial procedure, including discretion, were developed at the beginning of the last century by the representatives of legal science, as well as state officials and lawmakers. The Institution of procedural discretion was implemented in the norms of the draft law on courts in administrative cases of the Ukrainian People's Republic of 1932. For example, Article 80 of the Draft Law on Courts in Administrative cases stipulated that the court could increase the penalty at its own discretion; in administrative cases of non-property nature, the court, at its discretion, was allowed to establish the price of claim at the time of the sentence approval[4].

Procedural discretion is one of the institutions of administrative procedural law of states with advanced science, legislation and practice of administrative legal proceedings[5].

The institution of administrative proceedings, – Yu.L. Paneyko wrote,– does not create a goal for itself, but is only a practical thing that should provide units [subjects] with the legal functioning of administrative apparatus. Judicial and administrative supervision should

[3] Сергій Головатий, 'Верховенство права (правовладдя): як його тлумачить Венеційська Комісія'. Верховенство права: доповідь, схвалена Венеційською Комісією на 86-му пленарному засіданні (Венеція 25–26 березня 2011 року) (2011) 10 Право України 168–184; Report on the Rule of Law. Adopted by the Venice Commission at its 86th plenary session (Venice, 25–26 March 2001) on the basis of comments by Mr Pieter van Dijk (Member, Netherlands), Ms Gret Haller (Member, Switzerland), Mr Jeffrey Jowell (Member, United Kingdom), Mr Kaarlo Tuori (Member, Finland). Study No. 512/2009. CDL#AD(2011)003rev. Or. Engl.

[4] Гриценко І та інші (уклад) Адміністративне право і процес УНР в екзилі: невідома правнича спадщина України. за заг. ред. І Гриценка. (Дакор 2015) 363, 373, 466, 476, 496.

[5] Friedhelm Hufen Verwaltungsprozessrecht. 7., vollig neu bearbeitete Auflage. Verlag C.H. (Beck 2008) 101–104, 395–400, 448–450, 455–463, 472–476, 488–500, 604–605, 612–613.

become a measure of administrative justice and the highest authority of the means of public administration supervision[6].

Noting that administrative legal proceedings should be not only a supervisor, but also a regulator of the whole administration, the scholar proposed six of its postulates[7].

1. Administrative court is obliged to examine not only legitimacy (legality), but also reasonability[8] of public authority activity. Conducting inspections of administrative acts by administrative courts adopted on the basis of administrative discretion of public authorities provides a reasonable restriction to the minimum of discretionary power of administrative bodies.

2. The administrative court is obliged to cover the objective order of the state by a comprehensive supervision, and not to protect only the public-subjective rights. In accordance with this postulate, a judicial and administrative complaint must serve as "actio popularis" for every citizen; the supervision over the activities of administrative authorities is established by submission of such complaint.

3. The administrative court can not be limited by cancellation of administrative acts only – it is obliged to carry out merit inspection [of these acts][9].

4. The administrative court is also obliged to examine punitive-administrative cases, this way focusing the completeness of justice in the field of public administration.

5. The administrative court is obliged to carry out actively its procedural powers in case of so called power silence[10], namely, non-solving the administrative case in a certain period of time[11].

6. The structure of administrative judicial procedure should be based on the principle of multi-levelness[12], and in specific cases – on separation from certain branches of administration as well.

We believe that distinguishing the postulates of administrative judicial procedure mentioned, Yu.L. Paneyko not only (and not so much)

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[6] Бевзенко В та інші (уклад) Наука адміністрації й адміністративного права. Загальна частина (за викладами професора Юрія Панейка) (Дакор 2016) 379, 384, 385.

[7] Вимоги, які мають дотримуватися під час реалізації теорії адміністративного судочинства *(прим. авт.)*.

[8] Обґрунтованість *(прим. авт.)*.

[9] Перевірка обґрунтованості адміністративного акту *(прим. авт.)*.

[10] Бездіяльності *(прим. авт.)*.

[11] Відрізку *(прим. авт.)*.

[12] На принципі ієрархічності *(прим. авт.)*.

recognized the existence of discretion of the administrative court and thought about its peculiarities but in a way of justification of these postulates he recognized its limits and the grounds for administrative court discretion.

2. Formation of Article Objectives

The theoretical applied provisions which are of thorough attention are as follows: on what exactly the procedural discretion of the Administrative Court of Cassation may extend, what criteria of such discretion are[13] used . The emergence of the procedural discretion of administrative courts in general and the procedural discretion of the administrative court of cassation in particular is associated with the adoption in 2005 the Code of Administration Legal Proceedings of Ukraine. The legislative embodiment of the constitutional idea of protecting constitutional rights and freedoms of a person and a citizen (Art. 8, 55 of the Constitution of Ukraine) for the first time in the history of a new Ukrainian state has resulted in the consolidation of powers of administrative courts regarding the consideration of administrative jurisdiction cases, the procedure for appeal to administrative courts and implementation of administrative legal proceedings, and not only that[14].

By the norms of the Code of Administrative Legal Proceedings of Ukraine, administrative courts are also vested with the right to choose a procedural decision. For example, the court of cassation instance according to the outcomes of cassation complaint consideration has the right (Art. 349 CAP of Ukraine)[15]:

1) To leave the judge decisions of the first and/or appellate instance without changes, and a complaint – without satisfaction;

2) To revoke judicial decisions of the judges of the first and/or appellate instance in full or in part and to bring the case in full or in part to the new consideration, in particular according to jurisdiction established or for continuing consideration;

3) To revoke judicial decisions of the judges of the first and/or appellate instance in full or in part and to approve a new decision in the

[13] Критерії процесуального розсуду – обставини фактичного і нормативного змісту, які визначають зміст, види, «широту» такого розсуду.

[14] Кодекс адміністративного судочинства України: Закон України від 06.07.05 р. № 2747-IV (в редакції Закону України від 03.10.17 р. № 2147-VIII). Відомості Верховної Ради України. 2017. № 48. С. 5.

[15] Кодекс адміністративного судочинства України: Закон України від 06.07.05 р. № 2747-IV (в редакції Закону України від 03.10.17 р. № 2147-VIII). Відомості Верховної Ради України. 2017. № 48. С. 5.

appropriate part or the change the decision not bringing the case to a new consideration;

4) To revoke a court resolution of the appellate instance in full or partially and to leave the court decision of the court of first instance in the appropriate part in force;

5) To revoke the court decisions of the court of the first and/or appellate instance in full or partially and to close a case or to leave a claim without discretion in the appropriate part;

6) In some cases defined by the Code of Administrative Legal Proceedings of Ukraine to recognize as invalid the court decisions of the court of the first and/or appellate instance in full or partially and to close the case in full or partially in the appropriate part;

7) In some cases defined by the Code of Administrative Legal Proceedings of Ukraine to revoke its resolution (in full or partially) and to take one of the decisions, stipulated by clauses 1-6, part 1, Art. 349 of the Code.

3. Basic Material of the Study

Granting a procedural discretion to the Administrative Court of Cassation is explained by consolidation in the Code of Administrative Legal Proceedings of Ukraine of a large number of evaluative concepts such as public-legal relations, violation of rights, freedoms, interests, public-legal disputes, reasonable time, etc. Moreover, these evaluative concepts determine the implementation of justice by the Administrative Court of Cassation under the conditions of a procedural discretion, the further course of the administrative procedure as a whole depends on their interpretation. The category of “administrative case of minor complexity (minor case), in particular, (Article 20, part 1, Article 4 of the CAP of Ukraine) may serve as the evidence of such peculiarities of evaluative concepts.

For the first time in the Code of Administrative Legal Proceedings of Ukraine, the construction of “an administrative case of minor complexity (minor case), enshrined in it, is interpreted in two interrelated ways.

Firstly, in Clause 20, Part 1, Art. 4 of the CAP of Ukraine the very concept of administrative case of minor complexity (minor case) is formulated, with qualifying features of which being recognized as follows: the nature of disputed legal relations, the subject of evidence and

composition of participants, who do not require the conduct of preparatory proceedings and/or court session for the full and complete establishment of the circumstances of such case. However, in this norm of the Code of Administrative Legal Proceedings of Ukraine, the concept of minor case was formulated by the legislator with the help of evaluative concepts (legal relations, subject of evidence, composition of participants, which do not require the performance of additional procedural actions), which are also perceived ambiguously and require further interpretation.

Secondly, Clauses 1-11, Part 6, Art. 12 of the CAP of Ukraine list the types of cases of minor complexity; to determine them the following is used in the Code:

1) The norms of direct and indirect reference content (Clauses 1, 2, 3, 4, 5, 6, 8, 11, Part 6, Art. 12 of the CAP of Ukraine). For example, the norm of direct reference content is Clause 1, Part 6, Art. 12 of the CAP of Ukraine, as it directly specifies another norm of law to be applied ("admission of citizens to public service, record of service, dismissal from the public service, in addition to cases in which plaintiffs are officials who, in the meaning of the Law of Ukraine "On Prevention of Corruption" occupy a responsible and especially responsible position"). However, the norm of indirect reference content is, for example, Clause 2, Part 6, Art. 12 of the CAP of Ukraine ("appealing against the inaction of the authority or the information manager regarding the consideration of an application or request for information") – there is no indication of the norm of law to be applied, but there are concepts clearly defined by a special regulatory act – the Law of Ukraine "On access to public information";

2) Norms containing evaluative concepts (Clauses 7, 9, 10, Part 6, Art. 12 of the CAP of Ukraine.) For example, "other cases in which the court will conclude that they have minor complexity, except for cases that can not be considered under the rules of simplified proceedings".

It is no doubt that in order to ensure the compliance of the Court decision with the circumstances of the administrative case of minor complexity (minor case), it is necessary to comprehend the constituent parts and determine the peculiarities of the disputed legal relations, to identify and qualify the minor cases features, to evaluate them precisely, to verify the conformity of such an evaluation with the conclusions of the

local administrative court, the administrative court of appeal, and, finally, to formulate the relevant final objective conclusions.

Therefore, the conclusion on the administrative case of minor complexity (minor case) in accordance with the type and content of disputed legal relations can be made through a systematic system analysis of provisions of the Code of Administrative Legal Proceedings of Ukraine, national administrative law and the scientific interpretation of evaluative concepts.

Thus, according to Clause 8, Part 6, Art. 12 of the CAP of Ukraine, common cases are cases of minor complexity. The concept of a common case is stipulated in Clause 21, Part 1, Art. 4 of the CAP of Ukraine as administrative cases, the defendant of which is the same subject of authority (its individual structural units), the dispute in which arose on similar grounds, in relations governed by the same norms of law and in which the plaintiffs claim about similar requirements.

In order to conclude whether the administrative case has features of a minor complexity case (whether it is minor), it is necessary to evaluate the components and peculiarities of the disputed legal relations and compare it with the features of a minor case at the next stage of the study:

– Disputed relations;

– The subject to be proven;

– The participants of the case and the subject of authority (Clause 7, Part 1 Art. 4 of the CAP of Ukraine);

– The ground for dispute emergence (actual and normative ones);

– The legal norm regulating disputed relations;

– Claim requirements.

The difference between at least one of these components features from the common case makes it impossible to recognize the administrative case as a case of minor complexity (a minor case), and the false equation of the actual disputed legal relations with the normative features of a common case will result in the occurrence of negative procedural outcomes (for example, the refusal to open the proceedings in the pattern case, cancellation of court decisions referring a case to continue consideration or for a new consideration).

The influence of the evaluative concept such as “an administrative case of minor complexity (minor case)” on the procedural discretion of the Administrative Court of Cassation of the Supreme Court as well as the

consequences of such influence should be studied individually. The court evaluates an administrative case on the subject of its low significance early at the stage of opening of cassation proceedings. The decision on the opening of such proceeding is resulted from various factors including such feature of an administrative case as its low significance.

It should be reminded that the right to the cassation appeal of the court decision can be done only in cases stipulated by law (Clause 8, Art. 129 of the Constitution of Ukraine). Therefore, in the Administrative Court of Cassation the court desicions on cases of minor complexity can not be appealed (Clause 2, Part 5 Art. 328 of the CAP of Ukraine).

The judge of the Administrative Court of Cassation, having received a cassation appeal, has to provide, in particular, a justified response to the following questions:

1) Whether the administrative case appealed, in which a court decision resolution has been approved, is an administrative case of minor complexity (a minor case)?

2) According to the rules of which proceedings (common claim proceedings, simplified claim proceedings) the administrative courts of the first instance, appellate instance have considered the administrative case where the court decision has been approved that is appealed?

3) Are there any grounds for refusal in the opening of cassation proceedings/for the opening of cassation proceedings?

We can see that the evaluative concept of “an administrative case of minor complexity (a minor case)” does not only determine the procedural powers execution at own discretion by the Administrative Court of Cassation – in particular, it can determine the approval for opening or refusing in opening of the cassation proceedings, but it is resulted in further complex branched algorithmic chain of cause and effect links, possible options for resolution of current procedural tasks.

We should analyze the possible **conclusions and answers** to each of three questions arising in relation to the complaint made to the Court of Cassation.

1. Whether the administrative case appealed, in which a court decision has been approved, is an administrative case of minor complexity (a minor case)?

The answer to this question has already been formulated above and consists in the necessity of evaluating the form and content of the actual

disputed legal relations and their comparison with the norms of the Code of Administrative Legal Proceedings of Ukraine, establishing the concept of administrative cases of minor complexity (minor cases), the features and types of such cases. The study of disputed legal relations and their verification of compliance with the features of administrative cases of minor complexity (a minor case) provide for the application of such methods of scientific study, such as, in particular, the systemic method, analysis and synthesis. Thus, when evaluating the disputed legal relations, it is necessary to distinguish their subjects, establish the actual and normative grounds for their occurrence and compare them with the norms of the Code of Administrative Legal Proceedings of Ukraine.

2. According to the rules of which proceedings (common claim proceedings, simplified claim proceedings) the administrative courts of the first instance, appellate instance have considered the administrative case where the court resolution has been approved that is appealed?

The answer to this question can be either an opening or a refusal to open a cassation proceeding. It should be reminded that the quality of an administrative case (its low significance, or, conversely, significance), in accordance with the provisions of the Code of Administrative Legal Proceedings of Ukraine, is the basis for opening or refusal to open a cassation proceeding. Thus, court decisions in cases of minor complexity are not appealed under the cassation procedure (clause 2 part 5, Article 328 of the CAP of Ukraine). However, the Administrative Court of Cassation, having received a cassation appeal, at its own discretion differentiates the grounds for opening cassation proceedings in each administrative case.

Therefore, **firstly**, if the administrative courts of the first, appellate instances (or one of them) considered the administrative case under the rules of the general claim procedure, the Administrative Court of Cassation, having evaluated the actual circumstances of the case and finding that the case should be considered under the rules of simplified proceedings, since, according to the Court conclusions, it is minor, it may be concluded about the refusal to open the cassation proceedings.

Secondly, the Administrative Court of Cassation also evaluates critically the administrative case considered under the rules of simplified proceedings. Cassation proceedings in an administrative case considered

under the rules of simplified proceedings may be opened for at least two reasons:

– The court of first instance referred the administrative case to the category of cases of minor complexity by mistake (Clause "g", Part 5 of Article 328 of the CAP of Ukraine);

– The Administrative Court of Cassation has reasonable doubts as to the correctness of the definition of an administrative case as minor and it is not possible at the stage of opening the cassation proceedings to conclude whether the administrative case is minor/significant. In connection with these circumstances, there is an objective necessity to open cassation proceedings and investigate the actual circumstances of the administrative case carefully.

Thus, after receiving a cassation appeal, the Administrative Court of Cassation, at its discretion, evaluates the complexity of the administrative case, makes own relevant conclusions regarding its complexity and, as a result, in its own discretion evaluates the possibility of opening a cassation proceeding. The Administrative Court of Cassation is not bound by the conclusions of the Administrative Court of the first instance regarding the low significance or insignificance of the administrative case and determines the quality of a specific administrative case, its low significance/significance independently.

3. Are there any grounds for refusal in the opening of cassation proceedings/ for the opening of cassation proceedings?

In accordance with the general rule stipulated in Clause 8 Art. 129 of the Constitution of Ukraine, the main principles of judicial proceedings are to ensure the right to cassation appeal of a court decision in cases determined by law.

The grounds for refusal to open the cassation proceedings, as we have already mentioned, are stipulated in Clause 2, Part 5, Art. 328 of the CAP of Ukraine: the Administrative Court of Cassation refuses to open cassation proceedings, if the court resolutions are appealed in cases of minor complexity. However, this is not the only reason provided by the Code of Administrative Legal Proceedings of Ukraine. To form a comprehensive conclusion on the existence of grounds for opening a cassation proceedings/refusal to open a cassation proceeding, using the systematic method of study, the provisions of Clause 2, Part 5 of Art. 328 of the CAP of Ukraine should be analyzed also in conjunction with

clause 20, part 1 of Art. 4, clauses 1-11, part 6 of Art. 12, sub-clauses "a" – "g", clause 2, part 5, Art. 328, part 3, Art. 333 of the Code of Administrative Legal Proceedings of Ukraine.

Studying the norms of the CAP of Ukraine (Clause 20, Part 1, Clauses 1-11, Part 6, Art. 12, Sub-clauses "a" – "g", Clause 2, Part 5, Art. 328, Part 3, Art. 33), we should draw attention to two peculiarities resulted from their analysis:

– The lawmaker in Clause 10, Part 6, Art. 12 of the CAP of Ukraine, using evaluative concepts (such as "other cases in which the court concludes that they are of minor complexity"), has provided the administrative courts with wide freedom to determine administrative cases as cases of minor complexity (minor cases);

– The Sub-clauses "a"-"g", Clause 2, Part 5, Art. 328 of the CAP of Ukraine provide the evaluative concepts and structures, the existence of which in a particular administrative case "deprives" it of the quality of low significance and, accordingly, binds the Administrative Court of Cassation to open cassation proceedings in an administrative case complicated by such evaluative concepts and structures.

Once again, according to the necessity it is important to evaluate as precisely as possible, whether an administrative case is minor or not, in the event of the party's appeal in the administrative case to the existence of these evaluative concepts and structures, the Administrative Court of Cassation must evaluate and qualify the actual circumstances of the case as accurately as it can and make sure whether there are or there are no such evaluative concepts and structures (Sub-clauses "a" – "g", Clause 2, Part 5, Art. 328 of the CAP of Ukraine):

a) The cassation appeal concerns a right that is fundamental to the formation of a single law enforcement practice;

b) The person submitting the cassation appeal in accordance with this Code is deprived of the opportunity to refute the circumstances established by the appealed court decision in the consideration of another case;

c) The case represents a significant public interest or is of exceptional importance to the party who submits the appeal;

d) The court of the first instance referred the case to the category of cases of minor complexity by mistake.

It is obvious that the correctness and validity of the administrative case definition as minor on the basis of Clause 10, Part 6, Art. 12 of the CAP of Ukraine, the correctness and validity of the definition of "the issue of law which is fundamental", the deprivation of a person of "the possibility to refute the circumstances", the existence in the case of "significant public interest or exceptional importance of the case", the fact of the mistaken reference of "the cases by the court of the first instance to the category of cases of minor complexity" on the basis of sub-clauses "a" – "g" Clauses 2 Part 5 of Art. 328 of the CAP of Ukraine also influence the opening of cassation proceedings.

We should note that in addition to the criterion of minor complexity (low significance) of an administrative case, the Code of Administrative Legal Proceedings of Ukraine provides for other criteria for verifying the grounds for opening a cassation proceeding/refusal to open a cassation proceeding. All of them are stipulated by Art. 328, 333 of the CAP of Ukraine:

– The fact of the person's participation in the administrative case;

– The fact of resolving the issue on the subjective rights, freedoms, interests and/or responsibilities by the court;

– The type of court decision, which can/can not be appealed under the cassation procedure;

– The grounds for cassation appeal – incorrect application by the court of substantive law norms or violation of procedural law;

– The judicial resolutions in cases of minor complexity;

– An issue of law that is fundamental to the formation of unified law enforcement practice;

– The lack of opportunity to refute the circumstances established by the appealed court resolution in the course of consideration of another case;

– Significant public interest in an administrative case or its exceptional significance for the case participant, who makes a cassation appeal;

– The reference of the case to the category of minor cases by the court of the first instance by mistake.

So, every procedural act, in particular the opening of cassation proceedings, involves not only verification of compliance of administrative case actual circumstances to the norms of the Code of

Administrative Legal Proceedings of Ukraine, but also proper evaluation of the administrative case qualifying features (actual disputed legal relations, subject of evidence, participants in the disputed legal relations, subject of authority and other subjects, norms of law), factual or procedural circumstances (the case of minor complexity, the question of law, which has a fundamental meaning, significant public interest or exceptional significance of the case, incorrect reference the case to the category of cases of minor complexity by the court of the first instance).

The result of such evaluation will be the choice of a certain type of procedural resolution by the Administrative Court of Cassation from those provided by the Code of Administrative Legal Proceedings of Ukraine. Thus, in the final evaluation of the cassation appeal, the Administrative Court of Cassation may adopt one of the following procedural decisions:

1) To leave a cassation appeal without movement (Part 2, 3, 6, Article 332, Part 1, Article 2, Article 169 of the CAP of Ukraine);

2) To return a cassation appeal to the person who submitted it (parts 5, 6, 7 of Article 332 of the CAP of Ukraine);

3) To refuse to open a cassation proceeding (Article 333 of the CAP of Ukraine);

4) To open the cassation proceedings (Article 334 of the CAP of Ukraine).

As we could see, each procedural action (their combination), each stage of the administrative process is covered by a large number of evaluative concepts, which explains the breadth of the procedural discretion of the Administrative Court of Cassation. Accordingly, each type of procedural activity of the Administrative Court of Cassation is characterized by its "own" form of procedural discretion, which requires a thorough scientific studying and uncovering.

After analyzing the norms of the Code of Administrative Legal Proceedings of Ukraine, the criteria stipulated by them for verifying the grounds for opening a cassation proceeding/refusal to open a cassation proceeding, we come to the conclusion on following **grounds for refusal** to open the cassation proceedings:

– The person did not participate in the administrative case;

– The court did not resolve the issue of subjective rights, freedoms, interests and/or responsibilities;

– Such court decision is appealed, which according to the rules of the Code of Administrative Legal Proceedings of Ukraine can not be appealed under the cassation procedure;

– The court applied the rules of substantive law correctly or not violated norms of procedural law;

– The court resolutions on cases of minor complexity are appealed, which have been considered under the rules of simplified proceedings;

– The subject of a complaint is a question of law, which is not fundamental to the formation of a uniform law enforcement practice;

– There is a possibility to refute the circumstances established by the appealed court resolution in the consideration of another case;

– An administrative case does not represent a significant public interest or is not of an exceptional significance for the participant in the case who submitted the cassation appeal;

– The court of the first instance referred the case to the category of cases of minor complexity correctly.

However, the absence of these grounds allows the Administrative Court of Cassation to come to the conclusion that the cassation proceedings can be opened. Since there are the criteria for verifying the grounds for opening a cassation proceeding/refusal to open cassation proceeding, the exercise of procedural powers by the Administrative Court of Cassation can not be arbitrary and unreasonable, and the procedural discretion of this Court will have its limits, will be determined by circumstances and be implemented solely under the rules, defined by the Code of Administrative Legal Proceedings of Ukraine.

As it can be seen from the example of the provisions analysis of the Code of Administrative Legal Proceedings of Ukraine on the administrative case of minor complexity (a minor case), the freedom of the Administrative Court of Cassation to exercise its powers is rather significant; instead, the concept, content and peculiarities of procedural discretion have not yet been adequately substantiated by modern administrative procedural science, as it has been not verified by the practice of administrative judicial proceedings.

However, it is obvious that the freedom to exercise the powers of the Administrative Court of Cassation (its procedural discretion) has different types, limits, content of its manifestation. So, procedural discretion has both external and internal differences.

The procedural (or, as it is also called in the modern literature, judicial) discretion should be distinguished from administrative discretion, since it provides for the powers of a judge to govern the judicial trial (for example, a judge determines certain periods in preparatory proceedings, the specific duties that he will impose on the parties), especially when it comes to finding a court decision (for example, an evaluation of the case urgency or the need for urgent protection of threatened legal benefits in the form of preliminary legal protection). All these cases are covered by the operation of the principle of judge independence and can not be compared with administrative discretion, the use of which is actually verified, although there are certain limits for this, based on the principle of the division of power[16].

Therefore, from the procedural discretion of the Administrative Court of Cassation, fist of all, should be distinguished its administrative discretion, which to a lesser extent, but still implemented by it. Thus, the Administrative Court of Cassation carries out non-procedural (administrative) powers on the basis of administrative discretion in the event of its entering into administrative-legal relations, arising on the basis of the administrative legislation norms. An example of such legal relations is the legal relations of the public service (admission, passing, termination of the public service), in which the Court is vested, in particular, with the authority to charge and pay monetary support to judges and employees of their staff.

Realizing the existence of the administrative (outside procedural) and procedural discretion of the Administrative Court of Cassation, we should pay attention, **firstly**, to the fact that it exercises the powers of the administrative court of the first, appeal and cassation instances in accordance with Art. 22, 23, 24 of the Code of Administrative Legal Proceedings of Ukraine.

For example, the Supreme Court (the Administrative Court of Cassation) as a court of the first instance has judicial cases on the establishment by the Central Election Commission of election results or an all-Ukrainian referendum, a case regarding the early termination of the powers of a people's deputy of Ukraine, as well as cases concerning the appeal of acts, actions or inactions of the Verkhovna Rada of Ukraine, the

[16] Йорг Пуделька 'Понятие усмотрения и разграничение с судебным усмотрением'. Ежегодник публичного права 2017: Усмотрение и оценочные понятия в административном праве. (Инфотропик Медиа 2017) 6, 7.

President of Ukraine, the High Council of Justice, the High Qualifications Commission of Judges of Ukraine, the Qualification-Disciplinary Commission of Prosecutors (Part 4, Art. 22 of the CAP of Ukraine)[17].

Therefore, we can definitely state that there is a procedural discretion of the Administration Court of Cassation of the following types:

– The procedural discretion of the Administrative Court of Cassation as an administrative court of the first instance;

– The procedural discretion of the Administrative Court of Cassation as an administrative court of appellate instance;

– The procedural discretion of the Administrative Court of Cassation as an administrative court of the cassation instance.

If we evaluate the court proceedings in general regulated by the Code of Administrative Legal Proceedings of Ukraine, it becomes clear that the procedural discretion of the Administrative Court of Cassation as the court of the first, appeal and cassation instances also has a heterogeneous nature. Both the Code of Administrative Legal Proceedings of Ukraine and the practice of administrative judicial proceedings provide for the "consideration and resolution of administrative cases" (for example, Art. 4, 6, 9, 192 and other of the Code). Thus, the task of reviewing the case on the merits is the consideration and resolution of the dispute on the basis of materials collected in the preparatory proceedings, as well as distribution of court costs (Art. 192 of the CAP of Ukraine).

So, **secondly**, we can see that procedural powers of the Court have a dual orientation:

1) The exercise of procedural rights and obligations regarding the consideration process of administrative cases. For example, the court of cassation instance may consider the case under the procedure of the written proceeding on the materials available in the case in the absence of petitions from all participants in the case on the consideration of the case with their participation (Clause 1, Part 1, Article 245 of the CAP of Ukraine);

2) The exercise of procedural rights and obligations for the resolution of an administrative case (cassation appeal) on the merits (the discretion to resolve an administrative case on the merits).

In the Administrative Court of Cassation procedural powers may be exercised by the various compositions (organizational and procedural

[17] Кодекс адміністративного судочинства України: Закон України від 06.07.05 р. № 2747-IV (в редакції Закону України від 03.10.17 р. № 2147-VIII). Відомості Верховної Ради України. 2017. № 48. С. 5.

forms) of this Court: a judge individually, a panel of judges, a chamber, a unified chamber. For example, a cassation appeal is not taken for consideration and returned by the reporting judge if it is submitted by a person who has no administrative procedural capacity, not signed or signed by a person who is not entitled to sign it, or by a person whose position is not indicated (Clause 1 Part 5 Art. 332 of the CAP of Ukraine). The court hearing the case under the cassation procedure in the panel of judges, chambers or unified chambers shall transfer the case to the Grand Chamber of the Supreme Court if such a panel (chamber, the united chamber) considers it necessary to deviate from the conclusion on the application of the law norm in such legal relations, stipulated in the previously adopted resolution of the Grand Chamber (Part 4, Art. 346 of the CAP of Ukraine)[18]. In the same way, there is a procedural discretion of the judge, the panel of judges, the chamber, and the unified chamber of the Administrative Court of Cassation.

The division of the Court discretion under the conditions, in which it functions, depends on various numerous criteria:

– The stages of the administrative procedure;

– The forms of administrative judicial procedure – general claim proceeding, simplified claim proceeding (Art. 12 of the CAP of Ukraine);

– The administrative procedure participant (Art. 42–71 of the CAP of Ukraine);

– The composition of the Administrative Court of Cassation of the Supreme Court (Art. 31–33 of the CAP or Ukraine);

– The type of procedural action, inaction or other external manifestation (form) of execution of procedural powers;

– The norms (order, provision) of the Code of Administrative Judicial Procedure of Ukraine;

– National judicial practice, practice of European Court on Human Rights;

– The type of decision, action, inaction or any other external manifestation of the power execution of subject of authorities;

– Any external manifestation of execution of powers of physical person, legal entity;

– The subject of administrative-legal relations (for example, public property or other object of real estate).

[18] Кодекс адміністративного судочинства України: Закон України від 06.07.05 р. № 2747-IV (в редакції Закону України від 03.10.17 р. № 2147-VIII). Відомості Верховної Ради України. 2017. № 48. С. 5.

Therefore, the procedural discretion of the Administrative Court of Cassation of the Supreme Court is a peculiar "winding broken line" of (a set of) procedural actions, determined by actual circumstances, requirements and provisions of law, which (procedural actions) finally lead to the adoption of a court resolution.

Taking into account and under the influence of these criteria, the Court, accordingly, carries out justice in a variety of different ways of the procedural discretion. At the same time, these types of procedural discretion are inseparable from each other in time, since when considering and resolving an administrative case the Administrative Court of Cassation constantly chooses between the varieties of its procedural discretion. As a rule, there are no difficulties with the definition of a particular type of discretion in the Court. However, the problem is in other thing: to determine which of the possible resolutions should be chosen by the Court, taking into account the existing circumstances. A significant challenge to the Court is to perform actions in the following sequence:

– To collect information about all facts and circumstances which are of fundamental importance for the correct resolution of an administrative case;

– To evaluate this information objectively and compare it with the relevant rules of substantive law;

– To correlate the actual circumstances, the requirements of the legislation with procedural powers, vested on the Administrative Court of Cassation;

– To correlate the conclusions obtained in the end of such evaluation, the powers of the Court with the norm (norms) of the Administrative Code of Judicial Procedure of Ukraine as closely as possible, which were previously selected for use in relation to the conclusions;

– To state in the relevant court decision the results obtained after comparison and generalization.

Each type of procedural discretion of the Administrative Court of Cassation corresponds to the "own" set of criteria (conditions) required for consideration when choosing and adopting procedural resolutions. For example, a person who did not take part in a case, if the court decided on their rights, freedoms, interests and/or responsibilities, has the right to file a cassation appeal only after reconsidering under the appeal procedure according to person's appeal (Part 5, Art. 328 of the CAP of Ukraine). Having analyzed this norm, it becomes obvious that the Administrative Court of Cassation, evaluating the grounds for opening a cassation

proceeding on a complaint from a person who has not participated in the case, would check the fact of resolving the issue on the rights of the plaintiff by the administrative court.

As a result of procedural rights execution by the Administrative Court of Cassation, the evaluation of actual circumstances and the norms of law, it approves procedural resolutions, which, depending on certain criteria (circumstances), can be differentiated into **types:**

– The current procedural decision (court decision) approved in connection with the process of consideration of the cassation appeal. Procedural issues related to the movement of the case, the petitions and statements of the participants in the case, the issues on postponing the case consideration, the announcement of a break, the suspension of proceedings, as well as in other cases provided for by the Administrative Code of Legal Proceedings of Ukraine, are decided by the court of cassation instance by court decisions under the procedure established by the Administrative Code of Legal Proceedings of Ukraine for the adoption of decisions of the court of the first instance (Part 2, Art. 355, Art. 241 of the CAP of Ukraine);

– The final procedural decision, adopted on the results of consideration of the cassation appeal (administrative case). The court of cassation instance, on the basis of the results of consideration of the cassation appeal adopted the court resolutions in the form of decree in accordance with the requirements established by Art. 34 and Chapter 9 of section II of the Code of Administrative Legal Proceedings of Ukraine (Part 1, Art. 355 of the CAP of Ukraine).

Therefore, we have to agree that the main problems of the judge and the judicial procedure arise not in connection with the formal correlation of preconditions and conclusions, legal features of the situation and its legal consequences, that is, not in relation to legal syllogism. A much more complex task of judicial procedure and jurisprudence in general is the search, establishment and distinguishing of legally significant features. First of all, we speak about the features of the very law norm that will regulate the situation, and the features of a particular situation, that is, a certain case of life, which actually requires a legal solution. So, R. Cippelius comes to the conclusion that the resolution of legal cases (for example, regarding how many parties owe one another under the agreement, or whether an employee can claim damages resulting from labor injuries, etc.) is a complex lace. It is made out of finding prerequisites, their accurate outlining; establishing which of the norms

should be applied. Finally, the actual implementation of the norm takes place, that is, the use of the legal consequence as a logical conclusion resulted from the establishment of prerequisites and determines the proper conduct[19].

As the practice of administrative judicial procedure shows, it is not enough to find, establish and distinguish the legally meaningful features of the law norm regulating a certain situation[20]. At the discretion of the Administrative Court of Cassation and the adoption of the final procedural resolution will influence how the Court will evaluate and interpret the actual circumstances in relation to the specific norm of substantive law.

Thus, a court resolution may be canceled in whole or in part and instead a new resolution is made or it is changed in the appropriate part due to the incorrect application of the substantive law norms. Incorrect application of the substantive law norms is a misinterpretation of the law or the application of law that should not be applied or the non-application of the law that would have been applied (Part 1, 3, Art. 351 of the CAP of Ukraine)[21].

Therefore, for the adoption of a legitimate and justified court resolution on the basis of procedural discretion of a certain type, it is necessary to form a comprehensive list of criteria, the combination and content of which will determine the type of court resolution that will most fully correspond to the actual circumstances.

CONCLUSIONS

Therefore, the “own” list of criteria corresponds to each type of procedural discretion of the Administrative Court of Cassation. When examining the actual circumstances, interpreting them and relevant substantive legal norms, drawing conclusions on the correspondence of actual circumstances to the law norms, the Court examines them for compliance with the criteria from the list for a certain type of procedural discretion. Of course, it is not easy to make a comprehensive list and to describe the criteria of the procedural discretion of the Administrative Court of Cassation in a certain case, since the actual circumstances of the

[19] Райнгольд Циппеліус Методика правозастосування (Юстініан 2016) 141.

[20] Райнгольд Циппеліус Методика правозастосування (Юстініан 2016) 141.

[21] Кодекс адміністративного судочинства України: Закон України від 06.07.05 р. № 2747-IV (в редакції Закону України від 03.10.17 р. № 2147-VIII). Відомості Верховної Ради України. 2017. № 48. С. 5.

case are ambiguous, it is rather difficult to evaluate them, interpret and compare with the substantiate law norms.

Each criterion of procedural discretion of a certain type is evaluated both individually and in interrelation and in combination with other criteria; their relations and meaning for the final procedural resolution is evaluated. So, can we consider the refusal to open proceedings in an administrative case as reasonable (closing proceedings in an administrative case in the appropriate part based on the grounds stipulated, respectively, by Art. 238, 240 of CAP of Ukraine) (Art. 170, 238, 354 of CAP of Ukraine)?

For example, in relation to the dismissal of an administrative complaint by the national administrative courts (submitted in accordance with Art. 2 and Art. 4 of the Code of Administrative Legal Proceedings of Ukraine)[22] on the arbitrary search by the police of a private home and the payment of moral damage for violation of the home integrity, the European Court of Human Rights in the case "Kuzmenko against Ukraine" explained that, taking into account the fact that national courts refused to consider the applicant's complaint, referring him to the procedure that was neither accessible nor capable of bringing to the immediate and prompt settlement of his civil claim, the applicant was denied in the right to access to the court in the very essence. There was respectively a violation of Clause 1 of Art. 6 of the Convention[23].

Based on the results of the study described above, the **procedural discretion** of the Administrative Court of Cassation of the Supreme Court can be defined as the freedom of choice by the Administrative Court of Cassation (administrative court) of one or more procedural resolutions as defined by actual circumstances, norms of law and judicial practice from those provided by the norms of the Code of Administrative Legal Proceedings.

The practice of administrative judicial proceedings objectively requires not only justification of the types of procedural discretion of the Administrative Court of Cassation, but also a comprehensive description of possible algorithms of its procedural actions during the cassation reconsideration of administrative court resolutions of the first and appellate instances and the implementation by the Administrative Court of Cassation of other procedural powers.

[22] Кодекс адміністративного судочинства України у редакції до 15 грудня 2017 р. *(прим. авт.).*

[23] Справа «Кузьменко проти України» (заява № 49526/07). Рішення від 9 березня 2017 р. [Електронний ресурс] – Режим доступу: http://hudoc.echr.coe.int/eng?i=001-171782

The distinction and justification of the procedural discretion types of the Administrative Court of Cassation (administrative court) and its meaning in relation to certain, specific categories of administrative cases is urgent and practical.

SUMMARY

To ensure the fulfillment of the task of administrative judicial procedure, its "flexibility", the fullest protection and renewal of rights, freedoms, interests of physical persons (legal entities), the effective exercise of procedural functions, the administrative courts, as well as the Administrative Court of Cassation of the Supreme Court, have procedural powers that they realize at their own discretion. At the same time, the procedural discretion of the Administrative Court of Cassation of the Supreme Court can not be unlimited, arbitrary. The above mentioned discretion (freedom of actions) is determined by the actual circumstances, the requirements of legislation, judicial practice, and practice of the European Court on Human Rights.

It should be noted that the necessity for a justified choice is objectively inherent in the whole process of reviewing and resolving an administrative case or procedural actions associated with it.

The "own" list of criteria conforms to each type of procedural discretion of the Administrative Court of Cassation. When examining the actual circumstances, interpreting them and corresponding substantive law, drawing conclusions on the correspondence of actual circumstances to the law norms, the Court examines them for compliance with the criteria from the list for a certain type of procedural discretion. Definitely, it is not easy to make a comprehensive list and describe the criteria of procedural discretion of the Administrative Court of Cassation in a particular administrative case, since actual circumstances are quite often ambiguous; it is rather difficult to evaluate, interpret and compare them with the substantive law norms.

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FINANCIAL CONTROL IN THE FINANCIAL MANAGEMENT SYSTEM

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INTRODUCTION

Any financial performance process becomes meaningless if a strategy to control it is not defined and implemented based on objectives consistent with the current state of the company and its upcoming projects.

Financial control has now become an essential part of any company's finances. Hence, it is very important to understand the meaning of financial control, its objectives and benefits, and the steps that must be taken if it is to be implement correctly. Financial control may be construed as the analysis of a company's actual results, approached from different perspectives at different times, compared to its short, medium and long-term objectives and business plans.

These analyses require control and adjustment processes to ensure that business plans are being followed and that they can be amended in the event of anomalies, irregularities or unforeseen changes. The accountabilities of Treasury Board, the Minister of Finance, deputy ministers, executive financial officers, the Comptroller General and central agencies are stated, along with supporting policy. Government's approach to control and risk is updated from a traditional input focus to broader measures of performance and achievement of objectives.

The role of the Financial Management Branch, Office of the Comptroller General, in maintaining the Core Policy and Procedures Manual and developing financial management policy is covered, as are the responsibilities of other central agencies by subject area in an appendix table.

1. General and Financial Management

The management principles for government's operating framework are: resource allocation decisions made during the budget process communicate the government's priorities; government and ministry goals and objectives must be communicated clearly to the public and staff

throughout the hierarchy to ensure that all staff are working toward the same ends; assignment of responsibilities to minimize duplication of tasks and to ensure that someone is responsible for completing each function; staff who have been assigned responsibilities are given the authority to carry them out. Statutes grant authority to ministers and deputy ministers, and the authority is delegated throughout the organization; and individuals are held accountable for their stewardship after objectives have been established, responsibility assigned, authority delegated and resources allocated to individuals[1].

The key components of the government's financial management framework include: legislation, regulations, policies and procedures; financial planning and budgetary control; systems and internal controls; delegation of authorities and responsibilities; adherence to standards; and holding individuals and organizations accountable for erformance.

Government's approach to the broad area of control has evolved with new demands for enhanced governance and has moved beyond traditional financial and general management control. In any organization, the essence of internal control is purpose, commitment, capability and monitoring. This is embodied in a redefined management and comptrollership for government.

Government resources, structures, systems, processes and culture all support management and staff in achieving objectives. Control can assist in monitoring performance by providing reliable information on measures used, which may lead to further management decisions or actions. However, control cannot prevent the taking of decisions that are, in retrospect, flawed. There are inherent limitations even though due care and diligence may have been exercised. Risk assessments are necessary in making choices in the face of uncertainty, because of the possibility of adverse consequences from those choices.

Treasury Board acts as a committee of the Executive Council in matters relating to: government management practices; government financial management and control, including expenditures and assets; evaluation of government programs as to economy, efficiency and effectiveness; government personnel management; and other matters referred to it by the Executive Council.

[1] Багрінець С. Я. Діяльність міжнародних державних установ при здійсненні державного фінансового аудиту // Актуальні проблеми економіки. 2018. № 8. С. 321–334

In addition, Treasury Board may make regulations or issue directives respecting: the planning, management and reporting of capital expenditures by government and government bodies and accounting policies and practices for the government reporting entity, and the form and content of documents required to be made public.

The Minister of Finance is responsible for: the management and administration of the Consolidated Revenue Fund; oversight of revenues and expenditures; government fiscal policy and any other financial matter not assigned to Treasury Board or to any other person.

The Minister of Finance is also the chair of Treasury Board.

Deputy Ministers, on behalf of their respective ministers, are responsible for: supervising the management of the business and affairs of their respective ministries. Specific financial responsibilities are normally delegated, as appropriate, to assistant deputy ministers and to other executive, senior and financial officers. Deputy ministers review and approve matters related to ministry operations, strategic direction and organizational structure to ensure government and the public's best interests are served. Duties include: strategic planning, review of service plans and identification of inistry opportunities and challenges; approval of annual operating and capital budgets; review principal risks of the ministry and plans, systems and processes to manage such risks; oversight on the reliability and integrity of internal control and management information systems, and management practices and processes to ensure compliance with applicable policy and legislation; monitoring senior executive performance and succession planning and communicating with stakeholders in a timely, accurate and effective manner[2].

The Comptroller General is responsible for: government's financial management and administration policy and procedures; policies and procedures for maintaining the central accounts of government; preparing the Public Accounts and other financial statements and reports required by Treasury Board or the Minister of Finance; direction and coordination of financial management and administration policy and procedures, control and reporting systems and the approval of ministry financial organizational structures.

Treasury Board Staff are responsible for: providing the support to Treasury Board necessary to fulfill its statutory responsibilities, excluding

[2] Богуславська В. С. Внутрішній контроль: міжнародна правктика // Вісник ЖДТУ. – Серія: Економічні науки. 2017. № 2. С. 84–92

those specific duties assigned by statute or delegation to other central agencies such as the Office of the Comptroller General and the BC Public Service Agency.

Central Agencies such as Shared Services BC, the BC Public Service Agency and the Chief Information Office are responsible for coordinating government-wide activities in specific areas under the authority of different statutes and authorities.

Ministry and agency systems of financial administration must integrate and be fully compatible with government-wide systems to ensure a cohesive framework for overall financial management and control. Ministries must establish, maintain and operate systems of financial administration that are consistent with statutes, regulations, policy and directives. Deputy ministers must ensure staff that are assigned responsibilities for program delivering, including financial administration, complete their responsibilities in accordance with government policy[3].

Deputy ministers must delegate authority for ministry systems of financial administration to an executive financial officer, or to another officer depending on the size, structure and activities of the organization. This officer must be referred to as the chief financial officer and must report to an executive financial officer. Executive financial officers are accountable for the overall performance and effectiveness of ministry financial administration systems, and in most cases, have responsibility for personnel, data processing and general administrative services.

Responsibility centre managers must manage the human, physical and financial resources allocated to them for achieving their program objectives. Ministries must ensure that responsibility centre managers are clearly identified in their organizational structure and approve their signing authorities. Financial systems, processes and procedures related to a ministry's system of financial administration are to be clearly defined, documented and communicated to all levels within the ministry.

Ministries must periodically review their financial administration systems for compliance with policy, best practice improvements and to ensure activities are carried out efficiently and effectively. Responsibility centre managers and their subordinate staff are subject to the functional direction provided, on behalf of the deputy minister, by executive and chief financial officers in matters related to the financial administration

[3] Вишнівська В. А. Організація міжнародного контролю: Монографія. К.: Поро, 2018. 256 с.

and control. Personnel charged with functional responsibilities must have the requisite qualifications and experience to assure an overall quality of management and financial administration. Professional development and training will be required as necessary to maintain standards[4].

Position descriptions for personnel must reflect key functions and activities for the organization, and accurately describe the knowledge, skills and abilities required for the position. Deputy ministers, executive financial officers and, where applicable, chief financial officers will be subject to the functional direction and guidance of the Comptroller General in matters related to the administration and control of the government's system of financial administration. The Comptroller General must be part of selection processes in appointing chief financial officers.

The Comptroller General must review any proposals for the establishment of, or revision to, regulations under the Financial Administration Act. The Minister of Finance must approve all proposals for the establishment of, or revision to, Treasury Board Regulations prior to submission to Treasury Board (see Information and References, Regulations, Order in Councils and Directives).

The Financial Management Branch, Office of the Comptroller General, develops, issues and maintains the online Core Policy and Procedures Manual. Review and consultation with Treasury Board Staff, the Deputy Minister Committee, Assistant Deputy Ministers on Corporate Service Committee, Chief Financial Officer Council, and other central agencies, as appropriate, must precede the issuance of new policy. Ministries, central agencies and offices sponsoring amendments to policy must circulate the proposed policy change to the Office of the Comptroller General.

2. Financial Systems and Controls

Financial systems generate a significant amount of data and information, and are a vital component in managing the delivery of government services and in producing the Province of B.C. Public Accounts.

[4] Войдевич Н. О. Розвиток державного внутрішнього фінансового контролю в Україні // Проблеми підвищення ефективності інфраструктури: Збірник наукових праць. Вип. 28. К.: НАУ, 2017. С. 26–29.

Treasury Board has overall responsibility for government financial management and control in the province. On behalf of Treasury Board, the Office of the Comptroller General and Treasury Board Staff, Ministry of Finance prepare and release summary financial information, as well as, detailed information on ministries and agencies that make up the Consolidated Revenue Fund and the Government Reporting Entity.

Ministries are responsible for their financial systems and ensuring compliance with government policy and technology standards. The ministry Executive Financial Officer (EFO) or Chief Financial Officer (CFO) where delegated, has overall responsibility for implementation and operation of a financial system.

The Comptroller General is responsible for policy and direction for financial systems, and communication of standards and guidelines.

The Government Chief Information Officer is responsible for corporate information management and information technology policies and standards including architectures and information security.

Provincial Treasury is responsible for banking and financial transaction policies and standards, including approving and coordinating ministry acceptance of electronic payments.

Financial Information – for the purposes of this chapter, means the transactions or data produced or used in understanding, managing, and reporting on the financial aspects of an activity, and is not limited to accounting data. Financial information is relied on to make decisions of a financial nature.

Financial System – for the purposes of this chapter, means a significant system or process (e.g.: manual, automated, end-to-end, feeder, interfaced, central, including data and software applications) that produces or generates financial information[5]. For example, systems that:

- collect, maintain, process, transmit or report financial transactions;
- support internal and external financial report preparation, such as, cost and revenue information, financial statements, and the Public Accounts;
- assist ministries and central agencies with financial management, control, budgeting and forecasting.

Financial Risk and Controls Review (FRCR) – assesses and documents the adequacy of the designed controls for a new financial

[5] Вуйців М.М. Розвиток функції контролю при впровадженні інтегрованих інформаційних систем // Актуальні проблеми економіки. 2018. № 4. С. 226–242.

system (or a significant modification to an existing financial system or a system having a key financial component) with generally accepted financial control standards to prevent and reduce the risk of loss, error, misuse or fraud and to ensure conformity with accounting assertion criteria.

Payment Card Industry Data Security Assessment (PCI-DSA) – an assessment against the policies and standards established by Provincial Treasury for new or existing financial systems that accept payment cards.

Privacy Impact Assessment – an assessment conducted by a public body to determine if a current or proposed enactment, system, project, program or activity meets or will meet the requirements of the Freedom of Information and Protection of Privacy Act.

Security Threat Risk Assessment (STRA) – an information risk assessment process in a form approved by the Chief Information Security Officer, Information Security Branch.

Suite of Corporate Financial Systems – the core financial systems which support many of government's mission critical financial management business functions comprised of:

- the financial management and reporting system maintained by CAS, including the general ledger; data warehouse; budget and chart of accounts module; fixed asset module; accounts receivable module; iProcurement, purchase order, iExpenses and accounts payable modules; the corporate contract management module; the CAS Generic Interface; and the common interface for credit card payments.
- the Human Resource Management System, Time On Line and Corporate Human Resource Information and Payroll System maintained by Public Service Agency;
- the banking, cash, debt and investment systems maintained by Provincial Treasury, Ministry of Finance; and
- the revenue and tax collection systems maintained by Revenue Division, Ministry of Finance.

Ministries are responsible for determining the methodology to be used in the development of a financial system. The methodology must be consistent with government architectures and information management and information technology (IM/IT) policies and standards.

A financial system requires ministry approval prior to placement into production. Ministry EFO approval on the recommendation of the CFO,

and Comptroller General acceptance of the FRCR report (Policy 6), is required to implement a new financial system or a significant enhancement to an existing financial system. Financial system documentation needs to support compliance and financial risk and controls assessment[6].

Ministries must make use of, to the extent practicable, the suite of corporate financial systems or a component thereof, to process financial information so that core functionality is maximized and not duplicated. In addition, prior to developing any new financial system (or making significant modification to an existing financial system or a system having a key financial component) and/or submitting a funding request for same, ministries must collaborate with OCG1. This is to ensure that the proposed financial system or enhancement is warranted in addition to what is provided, or is capable of, by the suite of corporate financial systems.

Ministries must receive OCG endorsement before financial system development is substantially initiated or the funding request is advanced further in the budget approval process. The primary point of contact is between the ministry CFO and the Executive Director, Financial Management Branch, OCG.

Ministries must ensure that their financial information processes and financial systems have sufficient and comprehensive controls to prevent and reduce the risk of loss, error, misuse or fraud to an acceptable level. To this end, ministries must complete a pre-implementation FRCR for a new financial system (or a significant modification to an existing financial system or a system having a key financial component). The pre-implementation FRCR must be initiated during system development and completed prior to implementation to production. Ministry resourcing for the FRCR should be identified in the development budget.

Qualified, independent and objective parties (internal or external to the ministry) are required to complete the FRCR, at the discretion of the ministry EFO or CFO, where delegated. For example, use of experienced ministry audit or in-house systems staff, such as, a professional accountant (CA, CMA, CGA) with IM/IT audit skills, or a Certified Internal Auditor (CIA) with IM/IT audit skills, or a Certified Information Systems Auditor (CISA) with financial audit skills for the review would

[6] Гулько В.В. Модернізація державного фінансового контролю в Україні відповідно до європейського практики // Актуальні проблеми економіки. 2016. №1. С. 199–204.

be appropriate, as long as the reviewer was not the system developer, operator, or central to the program area that will use the financial system. In a self-assessment situation, the FRCR should be endorsed by an external service provider or qualified independent ministry staff with the requisite financial and IM/IT audit skills[7].

The ministry EFO, or CFO where delegated is responsible for approval of the pre-implementation FRCR report. The approved report must be provided to and accepted by the Comptroller General before the ministry implements the financial system to production. The primary point of contact is between the ministry CFO and the Executive Director, Financial Management Branch, OCG.

A post-implementation FRCR must be conducted by the ministry before the third year of operations to confirm that the financial system continues to support business requirements, any weaknesses have been addressed, and key financial controls continue to prevent and reduce the risk of loss, error, misuse or fraud.

Ministry assessment activities and workload for the post-implementation FRCR should be rationalized with those required of any other periodic assessment or assurance engagement.

The ministry EFO, or CFO where delegated is responsible for approval of the post-implementation FRCR report. The approved report must be provided to and accepted by the Comptroller General before the third operating year of the financial system has commenced. The primary point of contact is between the ministry CFO and the Executive Director, Financial Management Branch, OCG.

Ministries must ensure that payment transaction systems and processes are developed in compliance with Banking & Cash Management Branch, Provincial Treasury's policies and standards.

A principal requirement is that people that manage access to, or administer, electronic commerce systems must receive periodic training on how to protect payment card data (refer to the PCI DSS – Resource Centre (government access only) for Security and Awareness Training – government access only), as well as, participate in annual assessments coordinated by Banking & Cash Management against the PCI Data Security Standard. In addition, any new outsourced payment system must be certified as PCI compliant by the EFO prior to deployment.

[7] Довбня В.Д. Внутрішній контроль: реалії часу: Монографія. Донецьк: УкрДон, 2013. 187 с.

Refer to these Guidelines (government access only) for additional information on the corporate financial architecture when developing new financial systems to process payments. The guidelines are also intended to support engagement between ministries and OCG.

3. Financial Risk and Controls Review

Guidance on internal controls, FRCR completion, reporting and approval, and additional control examples are outlined below.

Effective internal controls support achievement of an organization's objectives. However, a one way or one size approach to designing and managing internal controls is not always realistic given the complexity of various government processes and systems to support them.

For a financial system, internal controls need to address key risks in the context of the overall business and environment in which it operates. The objective is to ensure an effective internal control regime for financial information and that it is consistent with the standards established for accounting assertions*. For example, assurances that financial transactions are properly authorized, financial records are properly maintained, assets are safeguarded, and that applicable legislation and policies are complied with.

To the extent possible, key controls over financial information and account balances should be automated. It is recognized that automation is not always possible and manual procedures, such as reconciliations and management reviews, may be necessary. It is expected that key automated and compensating controls will form an integral part of user acceptance testing, and their design will be confirmed as part of the FRCR[8].

Financial information transferred from a ministry financial system to the CAS Financials system, whether detailed or summarized, must meet transaction criteria for: Occurrence: recorded transactions actually occurred; Completeness: all transactions that should be recorded are; Valuation/Accuracy: correct transaction values are recorded; Classification: transactions are recorded in the proper account; Authorization: recorded transactions are valid; Cut-off: transactions are recorded in the correct accounting period; For subsidiary ledgers maintained by ministries, the subsidiary financial system balances must meet criteria pertaining to account balances for: existence: asset and

[8] Ковальчук С.Т. Внутрішній контроль: роздуми щодо сутності // Вісник ЧДТУ. 2017. № 1. С. 11–17.

liability balances exist, completeness: all valid asset and liability balances are recorded and can be reconciled to the CAS Financials system, valuation: asset and liability balances are included at correct amount.

The FRCR is a formal analysis of a financial system and the environment in which it operates using a risk-based approach. Key risk areas are identified and assessed along with the associated controls established by the internal control regime to mitigate risks. The assessment is supported by a scoping and risk rating exercise to determine whether the financial system includes adequate internal controls.

In relation to a financial system the following internal control areas need to be considered: business process controls -– include application controls. The scope of a FRCR needs to address material classes of financial transactions, account balances and summary financial information. Use quantitative and qualitative factors to determine whether or not the application supports material items. For example, review the dollar value of material transactions and the complexity of the accounting policies, or susceptibility of the process to error and fraud to determine the significance of the application/system and control objectives.

When the review of financial transactions/business processes for quantitative and qualitative factors is complete, overall significance and risk can be established. This is then used to determine the in scope financial transactions/business processes which need to be assessed by the FRCR.

General computer controls – include controls for system development, changes, access to programs and data, and continuity of operations, specifically business continuity, disaster and back-up recovery plans. In addition, the overall governance of the financial system and the definition and assignment of roles and responsibilities, including segregation of duties are considered. Refer to the COBIT ((the Control Objectives for Information and related Technology) is a framework or set of best practices for information technology management and has become a common standard for information technology related controls. COBIT provides users with a set of generally accepted measures, indicators, processes and practices to develop appropriate information technology controls. For additional information, refer to the ISACA website) control framework for detail information.

For the in scope application/system, the general computer controls in place to support the application are identified. When completed a risk assessment for each unique control area can be established. The risk ratings assist in identifying the priority of the general computer controls for the application and the FRCR.

Assessment activities for FRCRs should be coordinated with other assessments required by legislation or policy including a Security Threat and Risk Assessment (STRA), Privacy Impact Assessment, and Payment Card Industry Data Security (PCI-DSA) assessments. The review and assessment activities involve systems or programs with similar operating environment and security concerns and will likely generate common control and risk management information.

The control objectives, assessed risks, key controls, residual risk, and final assessment comments need to be documented, preferably in matrix form (see the template in 13.4.3) to support the review and remedial of any weaknesses. While generic, completion of the matrix requires consideration of the business context and financial implications in relation to the control objectives and risks[9].

A ministry self-assessment is acceptable when validated by an external service provider or qualified independent ministry staff with financial and IM/IT audit skills.

Ministry EFO sign off, or CFO where delegated, is required before the FRCR report is submitted to the Comptroller General. The FRCR report will also assist the CFO with ministry representations on financial reporting controls in relation to the Public Accounts

3. Internal Audit

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve the government's ability to meet its service goals and objectives. It uses a systematic and disciplined approach to evaluate and recommend improvements in the effectiveness of risk management, internal control, decision support and governance processes.

The internal audit function does not relieve ministry management of responsibility to establish and support an adequate internal control

[9] Кулаковська Л.П. Практичний погляд на фінансовий контроль та фінансовий менеджмент // Економіка і підприємництво. 2016. № 4. С. 14–19.

environment within their organization. It is ministry management's responsibility to plan, organize and direct the undertaking of sufficient controls to provide reasonable assurance that government goals and objectives will be accomplished in the most effective, efficient and economical manner.

The authority to undertake internal audits is derived from sections 4, 8 and 9 of the Financial Administration Act. Responsibility for the internal audit function within government has been delegated to the Office of the Comptroller General (OCG) and is administered by the Internal Audit and Advisory Services Branch (IAAS).

Cabinet: receives through Treasury Board, a presentation from IAAS on risks to the achievement of government's goals; provides guidance to Treasury Board on its priorities to assist IAAS in developing the Annual Corporate Audit Plan; receives through Treasury Board an Annual Corporate Audit Plan which responds to guidance provided; approves the Annual Corporate Audit Plan; receives through Treasury Board copies of all corporate and ministry audit reports prepared by IAAS, other than ad hoc and forensic audit reports; endorses Treasury Board recommendations for actions required to address significant issues arising through the corporate audit reports; receives through Treasury Board an annual report indicating the status of implementation of recommendations[10].

Treasury Board: provides direction to IAAS on Cabinet's guidance, for inclusion in the annual audit planning process; receives the Annual Corporate Audit Plan prepared by IAAS based on direction received; receives all audit reports prepared by IAAS, other than ad hoc and forensic audit reports, and makes specific recommendations to Cabinet on actions arising from the audit reports; directs IAAS, through the Comptroller General, to examine and report on whether public money, as defined in the Financial Administration Act, has been disbursed for the purpose intended, and to examine the financial management of government corporations; receives an Annual Report from the Comptroller General which summarizes the effectiveness of financial management and administration across government.

Comptroller General: responsible for providing an effective Internal Audit function for government; directs IAAS to examine the disbursements of public monies and the financial management of

[10] Марченко Д.М. Удосконалення організації внутрішнього фінансового контролю підприємств // Актуальні проблеми економіки. 2017. № 2. С. 163–171.

government corporations, as requested by Treasury Board; directs IAAS to investigate and monitor loss incidents in government, where appropriate; provides an Annual Report to Treasury Board which outlines recommendations for improvements to financial management across government.

Deputy Ministers: provide input into the annual corporate risk assessment and audit planning processes; a committee of deputy ministers will be established to review an Annual Audit Plan for ministry-specific projects arising from the annual risk assessment. This committee will also receive copies of all ministry-specific audit reports; receive copies of corporate audit reports that impact their organization; will provide timely responses to corporate or ministry-specific audit reports that involve the deputy minister's accountability

Ministries: provide input into the annual risk assessment process and audit planning process; request IAAS to perform ad hoc services; report significant loss incidents, including suspicions of illegal activity, to the Comptroller General.

Internal Audit and Advisory Services Branch (IAAS): provides an independent and objective assessment of the operations of ministries, agencies, boards and commissions and advises on improvements resulting from internal audit activities; provides a continuum of services ranging from assurance regarding the effectiveness of internal controls and compliance to comprehensive assessments of program performance and information systems; provides ongoing support and advice to ministry management through the conduct of special investigations, performance reviews and consulting services that support core activities[11].

4. Corporate Compliance and Controls Monitoring

The objective of the compliance and controls monitoring function is to work co-operatively with ministries and central agencies to provide a corporate monitoring mechanism to improve compliance with government core policy and to strengthen the financial and procurement control framework by: providing confidence that government payments are made in accordance with government core policy, including central directives, orders, and regulations; mitigating the risk of financial loss to government; reducing the cost of processing payments; and identifying and recommending systemic change to maintain and improve the overall control framework.

[11] Нєскородєв Ю.В. Методологічні аспекти фінансового контролю: Монографія. К.: Фотос, 2015. 403 с.

The compliance and controls monitoring function is a centralized systematic, risk-based approach designed to promote accountability and monitor the prudent and proper use of public monies. The Branch's monitoring and review approach is based on the government's Enterprise Risk Management Model (government access only).

The scope of the compliance and controls monitoring function encompasses all government payments that may be selected at any time for the examination of accuracy and compliance with core policy, central directives, orders, and regulations. Payment review results and recommendations are reported back to ministries, central agencies, and the Office of the Comptroller General.

The corporate compliance and controls monitoring function does not replace the responsibility of ministries and central agencies in establishing, supporting and maintaining an adequate system of internal controls including a sufficient financial and procurement control framework.

The authority to undertake compliance and controls monitoring is derived from sections 8 and 9 of the Financial Administration Act. Responsibility for the monitoring function within government including compliance reporting and recommendations regarding non-compliance has been delegated to the Office of the Comptroller General (OCG) and is administered by the Corporate Compliance and Controls Monitoring Branch (government access only).

The Corporate Compliance and Controls Monitoring Branch is responsible for: reducing the cost of internal controls by implementing a risk based management approach; testing and reporting on government payments for compliance with core policy, central directives, orders and regulations; recommending improvements to government policy, training and systems to improve compliance through both targeted and systemic changes; identifying control weaknesses and assisting central agencies and ministries in strengthening the financial and procurement management framework; providing custom payment reviews and reports where warranted and maintaining branch policy and procedures (government access only) for the administration of compliance and controls monitoring[12].

Ministries are responsible for: establishing, supporting and maintaining an adequate system of internal controls; following up on CMB recommendations and reporting back on corrective actions taken to reduce risk and improve compliance; collecting amounts owed to

[12] Пожар Т.О. Роль фінансово-економічних методів державного фінансового контролю у забезпеченні бюджетної дисципліни // Актуальні проблеми економіки. 2011. № 8. С. 327–333.

government identified in the review process and identifying ministry contact(s) for the receiving and conveying of requested documentation to support payments (government access only) selected for review.

5. Budget and financial management

Local governments, who have the competencies to effectively manage public finances, can better prioritize and allocate resources for social and economic needs.

On the contrary, corrupted, inefficient, or inadequate, public financial management may result in missed opportunities for growth and financial losses, reduced total investment and quality of infrastructure, underperformance of institutions, and a pervasive institutional corruption.

Poor planning practices that include failure to link policies, planning and budgeting, may contribute negatively to government performances and may foster corruptive behaviours on public financial management. In addition, many local governments still have weak or inadequate mechanisms for citizens to monitor government's performances on the financial field. With a poor control over expenditures and public goods, local officials may be involved in frauds, thefts and embezzlement.

In this framework, meaningful public oversight and participation in the formation of budgetary programs, as well as, making audit reports available to the public, could be beneficial to effectively restrain corruptive behaviours. Moreover, municipalities have to ensure, through all the stages of the budgetary processes, a reliable, transparent and comprehensive record of disbursements made, in order to promote accountability and identify irregularities.

An integrity risk assessment of budget and financial management and reporting, may identify some or all of the following integrity risk factors (the list is not limited):

Poor planning: Failure to link policy, planning and budgeting may contribute to poor budgeting outcomes. Inability to develop realistic forecasts may lead to non-transparent adjustments during budget execution. Inadequate funding of operations and maintenance may result in systems underperforming. Poor expenditure control may be exploited to gain a personal benefit (officials purchasing goods through the system for private use).

Missing nexus between budget as formulated and budget as executed. Inadequate accounts management creates possibilities for diversion of public funds to private accounts. Poor cash management allows fraud and theft of resources. Officials state inflated price regarding the value of a service to misappropriate cash. Officials do not record the transaction or

full amount of the cash collected. Officials make unauthorized modifications to payroll database records for personal benefit. Officials state incorrect input details in processing payroll (i.e. number of days worked and overtime, leaves taken.) Salaries are paid to fictitious employees and accounts („ghosts“ on the payroll).

Officials provide false information for the reimbursement of expenses. Officials make reimbursement claims based on improper bills. Improper verification of bills leads to excess payments.

Following the risk assessment, the local government may consider the following risk management strategies as development points to include:

Allow enough time to systematically provide the local assembly with all the financial and accounting documents needed for an informed vote on the budget, as well as on the approval of accounts.

Further to national regulations, introduce and implement a clear and comprehensive regulatory and operational framework for budget and fiscal management. Mechanisms for budgeting and policy formulation should be explicitly designed to reinforce coordination and cohesion in decision-making. Ensure that budget planning is based on reliable information. The integrity of fiscal information should be made subject to public and independent scrutiny.

Train all relevant staff to ensure they are aware of their responsibilities and acquire the necessary competence. Build and strengthen capacities for effective participation of all relevant staff in the budget process in all its phases. Pay attention to providing adequate capacities of heads of units that need to formulate their projected budgets

Through all stages of the budget process (formulation, approval, implementation and evaluation), provide timely local community with full, transparent and comprehensive information on the past, current, and projected fiscal activity of local government, specifying fiscal policy objectives, the macroeconomic framework, the policy basis for the budget and identifiable major fiscal risks. Ensure budget data is classified and presented in a user-friendly and simple way that enables policy analysis and promotes accountability.

Ensure appropriate participation (involvement) of citizens, NGOs, and other local stakeholders in the formulation of expenditure programs. Actively promote an understanding of the budget process by individual citizens and NGOs. Fiscal reporting should be timely, comprehensive, reliable, and identify deviations from the budget. Public financial documents cover budgets, in-year reports, mid-year reports, year-end reports and audit reports. Ensure availability and implementation of

clearly and comprehensively specified procedures for the execution and monitoring of approved expenditures. Introduce a system in which any new expenditure proposal over a certain threshold should be approved by the local assembly. Ensure that there are appropriate supervision, delegation and approval processes for accounts management[13].

Validate invoices with supporting documentation such as requisitions and purchase orders to help ensure that all payments are for legitimate goods and services.

Ensure that the financial management system systematically records all disbursements made, and allows them to be easily traced. Ensure regular, accurate capture and reconciliation of all transactions. Information on and lists of payments made over a certain specified threshold should be publicly available. A reliable system and adequate mechanism shall be set to trace budget expenditures at planned appropriate intervals (i.e. on a monthly basis) to allow better analysis of the budget implementation dynamics. Monitor and review by a finance committee, or equivalent, of the monthly financial performance, budgets and budget transfers, allocations, financing of projects and significant financial transactions to monitor accounts and identify anomalies.

Enhance external oversight over budget implementation by setting up a committee (local government representatives and independent external observers, such as NGO representatives), to monitor budget implementation on a regular basis (i.e. each semester). Organize public debates/ forums to inform citizens about budget implementation. Adopt and implement a rigorous policy/procedure for tracking, receiving, securing, transferring and banking cash (including related authority and type of cash). Communicate it effectively. Provide adequate inception and continued training for officials involved. Separate duties regarding cash handling collecting, depositing and reconciling – so that one individual does not have responsibility for all activities. Restrict the number of officials involved in cash transactions. Adopt a clear delegation procedure to ensure only authorized persons deal with cash[14].

Detail of the amount of cash required for each good/service. Obtain maximal visibility of this price list. Promote use of electronic transactions processes in order to minimise the use of currency.

Ensure all cash handling processes are adequately documented and authorized (i.e. receipts for all payments received, including date/time of

[13] Слободяник Ю.Б. Розвиток державного аудиту // Актуальні проблеми економіки. 2011. № 5. С. 252–256.

[14] Слободяник Ю.Б. Розвиток державного аудиту // Актуальні проблеми економіки. 2011. № 5. С. 252–256.

payment and amount). Ensure periodic check-ups, including mystery shoppers operations.

Introduce clear and comprehensive policy and procedures for payroll and disbursement of expenses and communicate them effectively (i.e. through intranet, internal meetings, instructions).

Ensure that only eligible officials have access to sensitive HR– and payroll-related information. Use access controls (passwords, routine verification procedures and authorisation). Where feasible, segregate functions to ensure that none has a complete control over any aspect of the payroll process.

Ensure mandatory advance approval by the supervisor for overtime and leave. Conduct unannounced spot checks by managers to verify attendance. Introduce a transparent and accountable system for the payment of monetary incentives.

Set clear instructions for claiming expenses (e.g. economy travel, accommodation, etc.). Adopt standardised rates on per diem paid.

Maintain adequate recordkeeping and reporting procedures to ensure that there are controls or systems to record and monitor all payroll transactions and all access to the payroll systems and actions taken are recorded.

CONCLUSIONS

Ever wonder which strategy do companies use for their financial benefit? As part of their strategic management plan, organizations implement various strategies to allocate resources more efficiently and reduce unnecessary expenses. They also check their financial statements regularly to identify losses and find new opportunities for growth and expansion. Financial controls play a key role in these processes.

At the most basic level, financial controls include the policies and processes that companies implement to ensure that their resources are properly monitored, directed and measured. These depend largely on the organization’s size, industry and resources. A startup, for example, will have different financial controls than a multinational corporation.

In general, companies start with an initial analysis of their finances. During this stage, managers evaluate the cash flow statement, the balance sheet and profit and loss reports. Next, they simulate real-life situations and create forecasts to identify the main factors that may influence their revenue, expenditure and overall financial performance.

This information provides valuable insights based on which managers can develop policies and procedures to grow their business and reach their financial goals. It also helps ensure that everything is running

well and can detect specific problems before they escalate. Furthermore, companies may use financial controls to implement preventive measures, determine the best course of action and identify areas of improvement.

SUMMARY

There are different types of control that organizations can use to ensure business growth and optimal performance. While financial controls focus on a company's finances and accounting procedures, strategic control involves setting performance standards, assessing and improving a company's current performance and setting goals for long-term business growth.

Your business may also implement operational control policies and procedures. The main difference between strategic control and operational control is that the first one helps track your strategy as it's being implemented, while the latter focuses on execution.

For example, operational control policies can help determine whether your company's resources are being utilized efficiently, the expenses associated with your new product line are in line with the cost estimates, your products meet the desired requirements and so on.

A strategic management plan can include different types of organizational controls depending on your company's short– and long-term goals. Financial controls, for example, can help you detect potential issues in your books and deviations in the budget. They also ensure that relevant accounting standards are implemented throughout the organization and that your business is operating efficiently. Strategic controls, on the other hand, can help you determine whether specific processes or strategies are working. The material used in the study has only the analysis of information resources.

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MODERN AND HISTORICAL ASPECT OF THE INTERNATIONAL SECURITY OF THE STATE

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INTRODUCTION

Radical changes are taking place in the world and international law must change with them. Sovereign states still predominate and power remains the decisive element in the prevailing international order. International organizations still have to operate within their mandates and are under the sway of powerful states or voting majorities. And yet, there is room for structural change in the content and procedures of international law of the future, which must become an international law of security and protection with the United Nations indispensably in the forefront.

The fundamental aim of the text below is to deal with the concept and models of global security as one of the crucial topics of global politics studies. We have to keep in mind that a term and notion of security usually implies a kind of sense of protection and safety from different possible harms coming from "outside". Therefore, it can be generally acceptable and understandable that the states want to protect their own territories by expanding great resources in making their territorial safe. Security topics are of very different kind, ranging from the causes of conflict between states to deterioration in the global climate or women's rights in global politics. The question of Security Studies as an academic discipline within the scope of Global Politics has been the subject of much debate and one of the most prosperous ways to deal with global security is firstly to analyze different standpoints which are existing within the research discipline. The article, in one word, will try to provide the readers with a basic approaches in the academic field of Security Studies with some necessary personal remarks by the author.

1. International law on security and protection

In the third edition of The Charter of the United Nations: A Commentary, edited by Bruno Simma and others, the authors refer to the report of the former Secretary General Kofi Annan «In Larger Freedom: Towards Development, Security and Human Rights for All»,

noting that «the threats to peace and security in the twenty-first century include not just international war and conflict, but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease, and environmental degradation since these can have equally catastrophic consequences. All of these threats can cause death or lessen life chances on a large scale. All of them can undermine States as the basic unit of the international system»[1].

The term «international security», in turn, they continue, requires «a transformation of international relations so that every State is assured that peace will not be broken, or at least that any breach of the peace will be limited in its impact. International security implies the right of every State to take advantage of any relevant security system, while also implying the legal obligations of every State to support such systems». The General Assembly, the authors further noted, «has stated that national and international security has become increasingly interrelated, which accordingly makes it necessary for States to approach international security in a comprehensive and cooperative manner».

The authors commented: «Traditionally, the concept of international security was perceived as primarily a problem of State security. Within recent years, however, an additional concept has emerged–that of human security, acknowledging that threats cannot only come from States and non-State actors, hut can also exist to the security of both States and the people».

They proceeded to point out that «International security can he promoted and achieved through various policies or measures, two of which are referred to in para 1 [of Article 1 of the Charter], namely measures of collective security and adjustment or settlement of international disputes.... International peace and security may Be endangered not only by acts of aggression, but also by any other threat to the peace»[2].

What do the changing threats to international security signify for the future of international law and order? Nick Butler of the Policy Institute at King's College London explored these issues in «Action on Climate Change Is Self-defence Not Altruism», published in the Financial Times on 20 October 2015. He reported that, in the middle of October that year, at the École Militaire in Paris, military and civilian leaders debated

[1] As cited in Bruno Simma and others, eds., The Charter of the United Nations: A Commentary vol. I., 3d ed.(Oxford, Oxford University Press, 2017), p. 111-112.

[2] As cited in Bruno Simma and others, eds., The Charter of the United Nations: A Commentary vol. I., 3d ed.(Oxford, Oxford University Press, 2017), p. 111-112.

the risks and the defence and security implications of climate change at a seminar organized jointly by the French Senate and the Defence Ministry. Many of the risks were well-known–such as the possibility of desertification in particular regions, or water shortages leading to inadequate harvests and a lack of food supplies, and on the other hand, the prospect of floods or sudden surges in temperature; and the risk of diseases and epidemics spread by dirty water.

Climate «change», the article commented, sounded too mild a description and implied a gradual, linear shift over decades to a temperature 2˚C higher than we are used to. The more likely reality, however, is climate disruption–erratic shifts in one direction or another. These raised the need for what the French call «green defence». The changing climate would drive even more people to migrate. Epidemics can spread rapidly in an age of global travel and trade. «In these circumstances it is hard to see how national and European security can he preserved without active intervention to deal with the problems at source. That means that European and possibly other countries will have to put people on the ground, and invest seriously in a process of development that helps to manage each of the risks and encourages the local population to stay instead of migrating». The French, Butler added, «are right to see the challenges associated with climate change as issues not just of energy policy and environmental protection but also as major defence and security challenges»[3].

A month before Nick Butler's article on «green defence» was published, Martin Rees, the British Astronomer Royal, wrote an opinion piece entitled «Scientists and Politicians Alike Must Rally to Protect Life on Earth» for the Financial Times. The author warned: «Heat stress will most hurt those without air conditioning, crop failure will most affect those who already struggle to afford food, extreme weather events will most endanger those whose homes are fragile... Climate change is aggravating a collapse in biodiversity that could eventually he comparable to the five mass extinction events in Earth's history. We are destroying the hook of life before we have read it....To design wise policies, we need all the efforts of scientists, economists and technologists, and the best knowledge that the 21st century can offer. But to implement them successfully, we need the full commitment of political leaders and the full support of the voting public»[4].

[3] Nick Butler, «Action on climate change is self-defence not altruism», Financial Times, 20 October 2015.
[4] Nick Butler, «Action on climate change is self-defence not altruism», Financial Times, 20 October 2015.

On 2 February 2011, United Nations Secretary-General Ban Ki-moon delivered the fourth Cyril Foster lecture at Oxford University on the topic, «Human Protection and the 21st Century United Nations». He noted that «the founders of the United Nations understood that sovereignty confers responsibility, a responsibility to ensure protection of human beings from want, from war, and from repression. When that responsibility is not discharged, the international community is morally obliged to consider its duty to act in the service of human protection».

«The task of human protection», he acknowledged, «is neither simple nor easy. We don't always succeed. But we must keep trying to make a difference. That is our individual and collective responsibility. People like myself, as Secretary-General, and the leaders of the world have a moral and political responsibility to protect populations.» He continued: «The challenges facing us have changed, but our core responsibility to maintain international peace and security has not. Slowly but surely, sometimes by trial and error, we have learned to use the instruments available under the Charter in new ways, adapting to evolving circumstances. Through this evolution, the need to operationalize a concept of human protection has emerged.» «Undoubtedly», the Secretary-General acknowledged, «the UN needs to perform its protection duties more effectively....The best form of protection is prevention. Prevention saves lives as well as resources»[5].

«Beyond the immediate protection agenda», he continued, «the United Nations was addressing the 'creeping vulnerabilities'. They also put populations at risk and weaken societies, and also plant the seeds of violence and conflict: water scarcity, food insecurity, corruption, transnational crimes, the effects of climate change. Often, this impact of climate change, water scarcity, has become the source of conflict, regional conflict, very serious regional conflict. So it is not surprising that these human security issues are finding their way onto our peacebuilding agenda, and specifically that ofthe Peacebuilding Commission».

«The UN», he acknowledged, «recognizes that human protection stands at the centre of both its purposes and principles».

The United Nations will have to change its approaches dramatically if it is to rise to the challenges of international protection. This will require great daring. In his acclaimed book, World Order, Henry Kissinger observed that «the idea that ... countries will identify violations of peace identically and be prepared to act in common against them is

[5] Ban Ki-moon, Secretary-General of the United Nations, "Human protection and the 21st century United Nations", Cyril Foster Lecture at Oxford University, Oxford, United Kingdom, 2 February 2018. Available from http://www.un.org/sg/selected-speeches/statement_full.asp?statID=1064.

belied by the experience of history.... Collective security has repeatedly revealed itself to be unworkable in situations that most seriously threaten international peace and security». He asked the question, «Were the rules and principles themselves the international order, or were they a scaffolding on top of geopolitical structure capable of-indeed requiring-more sophisticated management?».

Kissinger did not factor into his thinking the evolving challenges of international security and of human protection. The contemporary and future threats to international security and the challenges of international protection are such that even the mighty powers will have to recognize that United Nations action is necessary to save humanity and its habitat.

We shall need to turn to the United Nations as a system of public order, as advocated by the late Ian Brownlie: «The design of the United Nations constitutes a comprehensive public order system. In spite of the weakness involved in multilateral decision-making, the assumption is that the Organization has a monopoly on the use of force, and a primary responsibility for enforcement action to deal with breaches of the peace, threats to the peace or acts of aggression. Individual Member States have the exceptional right of individual or collective self-defence. In the case of regional organizations the power of enforcement action is in certain conditions delegated by the Security Council to the organizations concerned.

Enforcement action may involve the use of force on behalf of the community against a State. However, the practice has evolved of authorizing peacekeeping operations which are contingent upon the consent of the State whose territory is the site of the operations. In recent history the roles of peacekeeping and enforcement action have on occasion become confused, with unfortunate results.»

We shall need to transform international law into a law of international security and protection.

The foundations of a new international law of security and protection are already in place. They consist of:

- The competences of the Security Council under Chapter 7 of the United Nations Charter: the Security Council must transform itself into the world’s executive authority.
- The competences of the United Nations SecretaryGeneral under Article 99 of the Charter: the SecretaryGeneral must increasingly make submissions, including legal submissions, to the Security Council under

Article 99 of the Charter and invite it to issue mandatory orders under Chapter 7 of the Charter.

- The recommendatory competences of the United Nations General Assembly combined with the process of the formation of international customary law: the Secretary-General must use his Annual Reports to the General Assembly to draw its attention to threats to human security and to indicate policies and recommendations that can, through widespread consensus, crystallize into norms of international customary law.
- The interpretative role of the International Court of Justice to clarify the role of the law in meeting the circumstances of contemporary society: the Security Council and the General Assembly should use their competences to submit requests to the International Court of Justice for Advisory Opinions on the duties of States to cooperate for the security and protection of humanity and its habitat.

There is also room for: security advisories by heads of United Nations agencies; protection alerts by the United Nations High Commissioner for Human Rights; security and protection actions by regional organizations; the urgent need for progressive development of international law in key areas has also been identified by scholars and practitioners. In his recent book, An Unfinished Foundation: The United Nations and Global Environmental Governance, Ken Conca calls upon the international community to urgently: find an explicit human right to a safe and healthy environment; acknowledge an environmental responsibility to protect; infuse the law-and-development approach with stronger peace- and rights practice; find a legitimate (and clearly limited) environmental role for the United Nations Security Council; exploit opportunities for environmental peacebuilding; reconceive and strengthen what it means for the United Nations to make a "system-wide" response on environmental problems[6].

2. International Systems of States and Global Security Models

The conception of international systems of states is crucial as explanatory mechanism of both global politics and global security models. However, in order to understand international systems of states firstly the very notion of a system itself has to be clarified and defined. In this context, it can be said that "a system is an assemblage of units, objects, or parts united by some form of regular interaction". Any system is

[6] Ken Conca, An Unfinished Foundation: The United Nations and Global Environmental Governance (Oxford, Oxford University Press, 2015), p. 14.

necessarily constructed of different members on micro and macro levels which are interacting between themselves from horizontal and vertical perspectives. The member units of a system are of different size, capacity, potentials, wealth, might and therefore of different positions regarding the decision making procedure and especially power[7].

For the reason that member units of a system are constantly interacting with each other either from horizontal or vertical perspectives, it is quite naturally that in the case of a change in one unit the reactions to such change are expected by other units. The most expressed examples are arms race, seeking for balance of power, making political-military blocs with other units or even in the most drastic cases, committing aggression on the member unit. Any system with its member units has a tendency to regulate the relations between them and to try to respond by different means if those relations are changed at the expense of the hegemonic unit(s) of the system. It can exist at the same time two or more systems which are separated from each other by regulated boundaries, but different systems very often collaborate across the boundaries, for instance, in the areas of economy, knowledge or technology exchange as it was the case during the Cold War era (1949−1989). Finally, one system can break down for any reason what means that necessarily changes within the system were not achieved in order to save it (for instance, the case of the Warsaw Pact in 1990−1991). Subsequently, in stead of the old system a new system can emerged or the member units of the old system can be simply absorbed by another one as it happened, for example, with majority of the Central and South-East European states after the Cold War.

It is very difficult to fix the exact date when global system of international relations (IR) and therefore global security models started to work for the very reason that the process of globalization occurred over many centuries. However, the modern European system of IR can be traced back up to the time after the 1648 Westphalian Peace Treaty, while the process of globalization of international systems of inter-states relations started to work from the first half of the 19th century.

International systems of inter-states relations and global security became after the WWII investigated as academic subjects within the framework of World Systems Theory (WST) which recognizes that the states are historically playing the fundamental role in IR and they will do that in the future as well as but the systems of relations of (nation)-states

[7] Karen A. Mingst, Essentials of International Relations, Third edition, New York−London: W. W. Norton & Company, 2014, 81.

have to be understood and put in the context of global unity rather than conflicts based on realizations of different national interests. What the theoreticians of WST suggest is that the most meaningful system of global security has to be based on world-system but not on nation-states system. Therefore, they believe that international cooperation and order will replace international conflicts and anarchy. However, behind WST is basically hidden a system of Capitalist World-Economy (CWE) which is advocating ideology of globalization as a new form of the Western global imperialism based on the international division of labour. Thus, according to CWE, the whole world is divided into three labour and economic zones: the core-states (the Western developed mature economies); the periphery-states(mainly ex-colonies from Africa with still underdeveloped economies); and the semi-periphery states (mainly East-European ex-socialist states and Middle-East oil-rich states with rising economies and growing infrastructure). The essence of WST/CWE is that a globalization has to function in full benefit of the core-states which are fully exploiting the periphery-states with a semi-periphery states as a buffer between core and periphery segments of the world economy which are partially exploited by the core-states (by financial and economic means). In one word, WST/CWE is trying to legitimate existence and functioning of global Western capitalism and its exploitation of the rest of the world by promulgation of globalization ideology. However, the liberal ideology of globalization is advocating in reality the global process of (pervasive) American Westernization from all points of view – from cultural, economic or political to the issues of values, tradition and customs[8].

Historically, there were three fundamental types of international systems or relations between the states as the crucial actors in global politics even today: independent; hegemonic and imperial.

The Independent State System (ISS) is composed by the states as political actors and entities which each of them claim to be independent that means both autonomous and sovereign. The fundamental feature of such state, at least from the very theoretical point of view, is that it has right and possibility to make its own foreign and domestic policies out of any influence or dependence from the outside. The ISS presupposes that the state territory and its citizens are under full control and governance by the central state authority and that the state borders are inviolable from

[8] Jeffrey Haynes, Peter Hough, Shahin Malik, Lloyd Pettiford, World Politics, New York: Routledge, 2013, 715.

outside. In other words, any outside actor is not eligible to interfere into domestic affairs of the state which can be governed only by one "legitimate" authority that is internationally recognized as such. An independent state has to be and autonomous that means (as it meant at the time of ancient Greeks where the term comes) that the legitimate state authorities are adopting their own law and organizing the state activities, political and other types of life of the society according to it but not according to the imposed law, rules or values from the outside. States had to be equally treated and understood in regards to their claims to independence, autonomy and sovereignty regardless to the very practical fact that not all of them are of the same power, capabilities and might[9].

The Hegemonic State System (HSS) is based on an idea of a hegemon and hegemony imposed by a hegemon in IR what means that one or more states (or other actors in politics) dominate the system of IR or/and regional or global politics. A hegemon is fixing the standards, values and the „rules of the game" and having direct influence on the politics of the system's members like, for instance, the US in the NATO's bloc.

There are three possible types of HSS in global politics: unipolar (or Single) hegemony, when a single state is dominating as it was the case with the US immediately after the WWII; bipolar (or Dual) hegemony, when two dominant states exist in global politics as it was a case during the time of the Cold War (the USA and the USSR); multipolar (or Collective) hegemony, when several or even many states dominate international relations like during the time after the Vienna Congress in 1815 (Russia, Austria, Great Britain, France and Prussia).

In practice, in any of these three HSS, lesser powerful actors may interact their powers, but they have to get a permission by the hegemon for such action. In HSS, usually domestic affairs of the states are left untouched by the hegemon, while their foreign affairs are strictly under the hegemonic control.

The third type of IR, the Imperial State System (ImSS), existed from the ancient time (Assyria, Persia, Macedonia, Rome) and has been dominant in Europe, North Africa and Asia in the Middle Ages (the Frankish, Holy Roman, Byzantine, Ottoman or Habsburg empires). The essence of empire as a system is that it is composed by separate societal, ethnic, national, linguistic or/and confessional parts which are associated

[9] Cynthia Weber, Simulating Sovereignty: Intervention, the State, and Symbolic Interchange, Cambridge, UK: Cambridge University Press, 1994.

by regular interaction. However, within such multi-structural imperial framework it is a regular practice that one unit dominate over others by imposing over the rest its own political supremacy. The rest of the framework units have to accept such reality either by force or by interest while a political supremacy by one (ruling) part can be accepted by the others either implicitly or explicitly. However, the question arises what is a difference between the Hegemonic and the Imperial State System as these two systems seems to be very similar if not even the same? Nevertheless, the fundamental difference is that a dominant unit of an empire is much more able to manage other subjects of the state system in comparison to HSS and especially to force them to work for the central authority (tax collection, recruiting people for the imperial army, appointing local political client leaders, etc.). The empires are usually created and enlarged by military conquest, but also they can be militarily destroyed from the outside or disappear due to the inner revolutions followed by civil wars.

Security dilemma is based on an idea that security is a goal for which states struggle and compete between themselves. In principle, the states have to look to their own protection especially in an "anarchical" world system in which does not exist any supranational authority (like the UNO or OEBS, for instance) to be capable to impose and/or to ensure regional or global order of IR. In practice, traditionally, the states in order to achieve their security goals were striving for more and more power for the reason to escape the impact of the power and foreign policy of other states especially of the neighbours as the European history clearly shows. However, such practice in turn makes the other states or other actors in IR to feel themselves more insecure and therefore it encourages them to be prepared for the worst scenario (conflict, aggression, war). As any state cannot ever feel entirely secure, the security competition among the states is endless process that is resulting in constant power rising. In other words, security dilemma provokes a policy to firm security of a (nation)state which has a direct effect of threatening other states or actors in IR and, thereby, provoking power (usually military) counter-actions. This endless process is in fact decreasing security for all states especially if we know that in many cases offensive (imperialistic) foreign policy is justified by national arming by "defensive" weapons (the case of the US, for instance).

Global security as a concept has to be essentially founded on the idea of human (individual and group) security. However, IR in practice are

based on the right to self-preservation of the states (i.e., of their political regimes and social elites in power). This idea is born by Englishman Thomas Hobbes (1588−1679) who argued that the right to self-preservation is founded on a natural law, requiring at the same time a social harmony between the citizens and state authority. Therefore, global security has to be founded primarily on the concept of (a nation)state security as the states are natural form of political associations by the people and still are the fundamental actors in IR. The idea is that, presumably, both individual and civil rights of the citizen would be effectively secured only if the individual consented to the unchecked power of the state ruling elite. Therefore, we can say that a modern philosophy of state totalitarian regimes is de facto born by Th. Hobbes.

Based on Th. Hobbes' security philosophy, states will stress the necessity of social collectivisation for the protection of their security interests – it is how the concept of Collective Security (CS) was institutionalised as a mechanism that is used by the states in one bloc not to attack or proclaim the war to other states within the same bloc of coalition. The member states of the same bloc accept the practice to use their collective armed forces and other necessary capabilities in order to help and defend a fellow member state in the case of aggression from outside. Such "defensive" collective action has to continue until the time when "aggression" is reversed. The essence of such concept, therefore, is a claim that an „unprovoked", aggressive attack against any member of an organisation is going to be considered as an attack on all member states of that organisation. In practice, any really provoked attack of aggression can be easily claimed as „unprovoked" as it happened, for instance, with the case of Pearl Harbour in 1941 as we know today that the US regime did everything to provoke „unprovoked" Japanese action on December 7th. Nevertheless, while the concept of CS became the tool to count state aggression, it left very open question of how best to promote the individual or group (minority) security[10].

It has to be clarified that the very idea of human security is not opposing concern of national (state) security – the requirement that state is in obligation to protect its own citizens from the aggression from the external world, i.e. by a foreign actor. The human security idea argues that the most important focus of security has to be put on individual not on state but the state has to protect all its citizens as the protection umbrella

[10] Martin Griffiths, Terry O'Callaghan, Steven C. Roach, International Relations: The Key Concepts, Second edition, London−New York: Routledge, Taylor & Francis Group, 2008, 147.

from the outside threat. This approach takes an individual-centred view of security that is a basis for national, regional and finally global security. In essence, protection of human (individual and group) rights is giving the main framework for the realization of the concept of human security that advocates "protection against threats to the lives and well-being of individuals in areas of basic need including freedom from violence by terrorists, criminals, or police, availability of food and water, a clean environment, energy security, and freedom from poverty and economic exploitation"[11].

The chief purpose of collective security organization is to provide and maintain peaceful relations within the bloc which is composed by sovereign states but dominated by a hegemon. The concept of CS has declaratory as a main task to maintain peace between the key actors in IR that practically means the states, but in practice the real purpose of CS system is just to maintain peace and order among the members of the system, however not between the system and the rest of the world. The best example of CS system today is the NATO (North Atlantic Treaty Organization) which is not of any kind of global security bloc but rather only political-military alliance that is primarily serving the US national interests (global imperialism) across the globe. Nevertheless, the practical implementation of the concept is fluctuating between two models: traditional and more realistic model of Balance of Power and a new post-Cold War and more utopian model of World Government.

The idea of CS is for sure very attractive for the academics as it seeks to bring about important benefits of a "global government" but without altering the fundamental essence of traditional states system of anarchy. The concept of CS from global perspective, therefore, means a "system of international security under which all states agree to take joint action against states that attack". Anyway, formally, the concept of CS wants to apply a set of legally established mechanisms which are designed to prevent possible aggression by any state against any other state at least without the formal permission by the UNO. Different theorists explain on different ways by using different arguments the benefits or disadvantages of one of three possible global security models: Unipolar, Bipolar or Multipolar. Debates are basically going around the arguments which one of these three models is the most stable and above all most peaceful in comparison to all other models[12].

[11] Richard W. Mansbach, Kirsten L. Taylor, Introduction to Global Politics, Second edition, London−New York: Routledge, 2015, 578.

[12] Peter Hough, Understanding Global Security, Second edition, London-New York: Routledge, 2018, 2.

Those who advocate the Unipolar Security Model (USM) claim that this model gives the most security guarantees as in this case there is simply one power (state) to be in a position of a dominant actor in global politics having a role of a global hegemon or world policemen. It is a belief that world politics can be mostly peaceful if there is a single dominant state that is strong enough to enforce peace as a global hegemon. The hegemon is going to be so powerful that no any other global actor can challenge its superiority in world affairs and IR. This model of global security was adopted by the US administration immediately after the Cold War and mainly was advocated by Zbigniew Brzezinski who was trying to laid down academic foundations of the American hegemonic position in global politics which had primarily goal to destabilize, dismember and finally occupy Russia for the sake of free of charge exploitation of her natural resources according to the Kosovo pattern from June 1999 onward. If the US administration succeed in realization of such goal, the global geopolitical game over the Eurasian Heartland would be finally resolved in the favour of Washington.

The NATO was, is and going to be from the very beginning of its existence (est. 1949) the fundamental instrument of the US policy of global hegemony concept that is known also as Pax Americana. Up today, the NATO remains the most powerful military alliance in the world that was allegedly established "…to provide security for Western Europe, NATO became an unprecedented peacetime alliance with a permanent secretariat and a military headquarters that represents the US commitment to deter Soviet aggression". However, the very existence of the NATO after the dissolution of the Soviet Union clearly prove that the ultimate goal of its creation and functioning was not "to deter Soviet aggression" while its (only eastward) enlargement from 1999 onward indicates that in fact Russia was, is and going to be the chief object of the fundamental point of the NATO's policy of the US expansionism and global hegemony. The 1998−1999 Kosovo War, in which the NATO's forces became deeply engaged for the first time after its establishment in 1949, marks the beginning of the direct US policy of brutal and open gangsterism (at least) after the Cold War on the global level of IR and world politics[13].

[13] Experiment Kosovo: Die Rückkehr des Kolonialismus, Wien: Promedia Druck– und Verlagsges. m.b.h., 2012).

The USM is necessarily founded on an idea of hegemony in global politics. The word hegemonia comes from the ancient Greek language (as many other words used today by the Western academic world) with authentic means of "leadership". In IR, a notion of a "hegemon" is used as a synonym for "leader" or "leading state" within the system (bloc) composed by at least two or several states. However, the bloc member countries have to establish and maintain certain relations between themselves what practically means that one of member states became de facto a hegemon within the whole bloc concerning decision making policy and procedure (for example, the USA in the NATO, the USSR in the Warsaw Pact or Germany in the EU). A leadership or hegemony within the system implies certain degree of order, collective organization and above all hierarchy relationships between the members of a system. However, political hegemony in IR is not existing by itself as it is a phenomenon which exists within some interstate system, that is itself the product of specific historical, political, economic, ideological or other circumstances. All hegemonic states within the system enjoy "structural power" which permits the leader to occupy a central leading position in its own created and run system. All other member states are collaborators to the leading role of the hegemon expecting to get a proper reward for their service. On the other hand, a hegemon has to mobilize its own economic, financial, technical, political, human and other resources in order to perform a role of a leader and, therefore, this is why only some (rich) states have a real potential to be hegemons (like the USA in the NATO, for instance).

The USA is today the world's most powerful and imperialistic single state ever existed in history. Washington is after the WWII using the NATO as a justification of its global hegemonic designs and the American ability and willingness to resume a hegemonic role in the world are of the crucial importance for IR, world order and global security. In principle, majority of studies dealing with hegemony and imperialism point to the British 19th century empire and the US empire after the WWII as two most successful hegemonic cases in world's political history. Both of these two empires formally justified their policy of global imperialism within the framework of the concept of USM.

Probably the most important disadvantage of USM is that a unipolar world with a strong global hegemon will all the time tempt either one or several powers to try to challenge the hegemon by different means. This is basically an endless game till the hegemon finally lost its position as such

and the system of security became transformed into a new form based on a new security model. That is exactly what happened with the Roman Empire as one of examples of USM.

Nevertheless, in the unipolar system, a hegemon faces few constraints on its policy, determines rules of game in global politics and restricts the autonomous actions by others as it was exactly the case by the US as a "world policemen" at the time of the New World Order in 1990−2008. But on the other side, such hegemonic position and policy of terrorizing the rest of the world (or system) provokes self-defence reactions by others which finally results in the change in the distribution of power among the states (or actors) that can be a cause of war on larger scale of intensity and space. For the matter of comparison, the US hegemonic, Russophobic and barbaric global policy at the time of the post-Cold War New World Order can at the end cause a new world war with Russia (and probably China) as the Peloponnesian War (431−404 BC) were caused by the hegemonic policy of the Athens which provoked the fear and self-defence reaction by Sparta[14].

The champions of the Bipolar Security Model (BSM), however, believe that a bipolarity of global politics could bring a long-time peace and world security instead of USM. In the case of BSM, the two crucial powers in the world are monitoring each other's behaviour on global arena and therefore removing a biggest part of the security uncertainty in world politics, international relations and foreign affairs associated with the possibility of the beginning of war between the Great Powers.

A Multipolar Security Model (MSM) looks like as the best option dealing with the prevention of war and protecting global security as a distribution of power is as much as "multi" there are lesser chances for outbreak of the war between the Great Powers. In essence, MSM can moderate hostility among the Great Powers as they are forced to create shifting alliances in which there are no permanent enemies. Nevertheless, for many researchers, MSM is in fact creating a dangerous uncertainty for the very reason as there is a bigger number of the Great Powers or other powerful actors in world politics.

CONCLUSIONS

How is the international community to proceed in this reconceptualizing of international law to meet the new challenges of

[14] Михаил Ростовцев, Историја старога света: Грчка и Рим, Нови Сад: Матица српска, 1990, 112−120; Thucydides, The Peloponnesian War, Indianapolis: Hackett Publishing Company, Inc., 1999.

security and human protection? The place to start would be for the United Nations Security Council to hold an urgent debate on the need for a new international law of security and protection. An enlightened member of the Council could submit a concept paper and advocate such a debate.

The academic research field of Security Studies is of extreme complexity raging from the standpoint that these studies should have a narrow military focus as the fundamental security threat to the territorial integrity of states comes during times of conflict to the view that individuals are the final research object of the studies but not the states themselves. Therefore, many academics focus their research on global security basically on human emancipation which is usually understood as achieving wide scope of freedoms – both individual and group. They argue that academic discipline of Security Studies should focus on them but not on the security of the state.

Finally, there are many arguments over what the research and referent object of Security Studies has to be, whether military power is fundamental for state security, who is going to be mainly responsible for providing security or what the studies as academic field have to consider as its research subject matter and focus. The fundamental aim of this article was to present the main route through the (mine) field of Security Studies as an academic research discipline.

SUMMARY

A Ukrainian begins the first cut on a Kh-22 air-to-surface missile during elimination activities at an air base in Ozernoye, Ukraine. The weapon was eliminated under the Cooperative Threat Reduction program implemented by the Defense Threat Reduction Agency. International security, also called global security, refers to the amalgamation of measures taken by states and international organizations, such as the United Nations, European Union, and others, to ensure mutual survival and safety. These measures include military action and diplomatic agreements such as treaties and conventions. International and national security are invariably linked. International security is national security or state security in the global arena.

With the end of World War II, a new subject of academic study focusing on international security emerged. It began as an independent field of study, but was absorbed as a sub-field of international relations. Since it took hold in the 1950s, the study of international security has

been at the heart of international relations studies. It covers labels like «security studies», «strategic studies», «peace studies», and others.

The meaning of «security» is often treated as a common sense term that can be understood by «unacknowledged consensus». The content of international security has expanded over the years. Today it covers a variety of interconnected issues in the world that affect survival. It ranges from the traditional or conventional modes of military power, the causes and consequences of war between states, economic strength, to ethnic, religious and ideological conflicts, trade and economic conflicts, energy supplies, science and technology, food, as well as threats to human security and the stability of states from environmental degradation, infectious diseases, climate change and the activities of non-state actors. The material used in the study has only the analysis of information resources.

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THE GENESIS OF CORRUPTION CRIME IN UKRAINE IN THE CONTEXT OF THE STATE CRIMINALIZATION

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INTRODUCTION

Such a negative social phenomenon as corruption is a sort of the disease of the society that has affected politics, state authorities, economics, as well as financial, social and cultural spheres. That is why it has a very negative effect on the democratic development of the state, which is a threat to its national security. It is not possible to fight against such "disease" without knowing its essence, the causes of its origin in detail and course of action to be taken. The search for a solution to the problems of combating organized crime and corruption exclusively by criminal means is a utopian idea. A relatively large number of law enforcement bodies have already been set up in Ukraine. Huge amounts of money are spent on maintaining newly created bodies. At the same time, their effectiveness in combating corruption remains very low. Law enforcement officers do not make the necessary efforts to detect transnational criminal organizations, but are engaged in combating small organized groups and subgroups instead. Besides, the Ukrainian law-enforcement bodies after being reformed have changed more in form than in essence and still have a lot of problems, in particular, the problems related to duplicating their functions and coordination of interagency.

Organized corruption in Ukraine has an ancient background. It has gone a long way from being primitive to becoming perfect one. At each stage of development there was a transformation of its form and essence.

1. Historical background to the origin of corruption crime in Ukraine

The stage of origin and formation of organized crime in our state began during the period of time when Ukraine was part of the Soviet Union in the 40's – 50's and subsequent years as well. It was preceded by professional crime, which has a much longer history. In the late 50's and 60's organized crime started to form new economic structures – various artels, whose purpose was to become rich in illegal way. In particular, the

«Trudovyk» artel in the Lviv region was quite indicative one in this respect. In 1961, as a result of an investigation carried out by the Prosecutor's Office, a number of employees of this structure were arrested for theft of public funds in particularly large amounts, of which 8 were subsequently sentenced to an exceptional punishment, i.e. execution by firing squad[1]. The structure of the Lviv artel «Trudovyk» consisted of about nineteen people. The foundation of such a company fell into the category of ideologically harmful phenomena, but at that time, when Lviv was considered the outskirts, it was possible to be done, since they had more freedom in following the law or not. The production of clothes and accessories by the labor artel could not even be called underground one. Some things were produced quite legally. The artel was hiding from the state only the volume of its successful production. Business very quickly became not only cost effective, but also very profitable and lucrative, and therefore the artels were carried away way too much by that fact. They became obsessed with that so much that they forgot in what country were their tailor's shops. As a result, in 1961, a whole group of nineteen people was arrested. Although they were accused of theft, in reality, this was not entirely the case. The fact is that in the USSR the legal framework for making a successful business did not exist; besides the very opportunity for individuals to get rich fundamentally contradicted the socialist economy in whole. At court, the artels were accused of stealing public funds worth almost two million UAH. As a result of such huge amounts, eight members of the artel were sentenced to execution by firing squad. This caused public astonishment, because they produced goods under officially registered artel, that is, their activities were sanctioned by the state itself, which subsequently passed such verdict. The strange fact was also that the raw materials from which they produced raincoats and costumes were bought at the warehouse.

Since the introduction of the new economic policy (NEP) the legislative base of the USSR did not eliminate some loopholes that allowed making private production. The psychology of those people and methods of work differed significantly from the psychology and methods of the shadow economy operators of the later period. They did not put

[1] Романюк Б.В. Трансформація сучасної організованої злочинності в Україні. Україна в системі сучасного міжнародного правопорядку та Європейської інтеграції: загальнотеоретичні та практичні проблеми: матеріали міжнар. наук.-практ.конф., м. Київ, 18 груд. 2018 р. Київ: Таврійський національний університет імені В. І. Вернадського. 2018. 204 с.

themselves in the official opposition to the Criminal Code, unlike the black marketeers that came to replace them during the «stagnant» period. They knew perfectly well that the judges, who sentenced the verdict, would not actually care how much and what kind of goods the shadow economy operators made, since production volumes there did not play any role. After all, the raw material was acquired through the theft of state property; besides, the permissive basis for private production no longer existed in the USSR at that time. However, the fact of the criminogenic nature of their actions did not stop any of the shadow economy operators anyway.

In the 70's and 80's organized crime was already using a corruption as an instrument, including also supreme state bodies. Criminal proceedings against some high-ranking officials of the USSR, also heads of Uzbekistan and other Central Asian republics are quite noteworthy. Therefore, it is not unexpected that in November 1985 for the first time at the College of the Ministry of Internal Affairs of the USSR the fact of organized crime in the state was recognized.

The stage of systemic accumulation of primary capital (late 1980s – early 1990s) is characterized by the introduction of so-called reformation period at that time in the USSR, which was associated with some weakening in public administration, including also economy and financial spheres. It was allowed to create private cooperatives for various types of activities. Cooperatives did not have any sufficient material base and raw materials, therefore, their leaders entered into unlawful dealings with state-owned enterprises, banks to use their resources for their own activities and enrichment. The law enforcement authorities were even strictly banned for quite a long time to check up the activities of these new economic or financial institutions under the guise of creating favorable conditions for their development. Racket, speculation, currency exchange and other shadow activities were widely spread all over the state. On the other hand, there was an unjustified sharp release of prices for consumer goods at that time, which led to the impoverishment of the population. In addition, most citizens lost their money savings in savings banks. Such situation was happening in the period of uncontrolled development of cooperation and state industry. At that time, the state monopoly on foreign trade, alcohol production, etc. was eliminated

Poor and non-rational reforms of the independent by that time Ukraine could not provide a reliable protection against the activities of organized criminal groups; moreover they even promoted them in some way or another. As the researchers point out, it was during that period of time that the first manifestations of criminal elements, which were merged with criminals in the economy and finance spheres, were dated. This led to the emergence of a shadow economy, «white-collar» crime; and the process of involvement of certain employees of the state apparatus and law enforcement bodies[2] in the criminal activities started also at that time. It was exactly at that time that some of the still scattered criminal groups started to accumulate their primary capital and professional potential. Due to such situation, in 1985, the first divisions of combating organized crime were set up within the structure of the Ministry of Internal Affairs of Ukraine, so, the special interdepartmental body, namely the Coordinating Committee on Combating Corruption and Organized Crime was created. At that time, the state and law enforcement bodies were able to significantly influence the manifestations of organized crime, but mainly it involved organized criminal groups engaged in racketeering and other forms of extortion. Such well-known organized criminal groups as «Avdisheva», «Kiselya», «Savlochi» and others were detected and brought to criminal responsibility. This was the period when the first attempts to launder money of illicit enrichment took place. But during that time newly created state and law-enforcement bodies of independent Ukraine have not yet been so effective in influencing the real organized crime due to their inadequate qualifications. The organized crime was undergoing significant transformational processes which had become more «professional» then. Due to the dubious activity of some politicians, the criminal legislation directed law enforcement officers to expose the lowest levels of organized crime[3].

The stage, when criminalization of the society started (1993-1995). During this period, the majority of new business entities and a large part of state-owned enterprises were taken over by the racketeering groups. Transnational clans have significantly influenced the distribution of

[2] Кримінологія. Спеціалізований курс лекцій зі схемами : Загальна та Особлива частини : [навч. посібн.] / Джужа О.М., Моісеєв Є.М., Василевич В.В. К. : Атіка, 2001. 172 с.

[3] Романюк Б.В. Трансформація сучасної організованої злочинності в Україні. Україна в системі сучасного міжнародного правопорядку та Європейської інтеграції: загальнотеоретичні та практичні проблеми: Матеріали міжнар. наук.-практ. конф., м. Київ, 18 груд. 2018 р. Київ: Таврійський національний університет імені В. І. Вернадського. 2018. С. 155, 156.

marketable products in the Ukrainian market. Up to 3 billion US dollars were illegally exported annually from Ukraine, which constituted almost 50% of legal exports in 1993. The state apparatus, including its law enforcement agencies, more and more was merging with semi-criminal clans and losing the immunity of protection against criminal acts. In fact, not only the shadow sector in the economy was formed in Ukraine, but also the illegal Fifth Estate was formed, which began to duplicate the most important functions of the state. In the period from 1994 to 1995, none of the problems was given as much attention by the government as the combating the criminalization of the society. All this, of course, contributed to the mobilization of public opinion and created an unfavorable public environment for the activities of the Fifth Estate. However, political declarations were supported also by practical steps. Given the insufficient staffing, financial, material, legal capabilities of individual law enforcement bodies, also the possible pressure on them by high officials, as well as the direct connection of part of law enforcement with criminality, they placed a premium on special interdepartmental operational investigation teams under the General Prosecutor's Office of Ukraine.

The results of the research by the experts of the Ukrainian Center for Economic and Political Studies named after O. Razumkov and also by a number of other domestic and international independent organizations, give us grounds to suggest that they did not succeed much in breaking the tendency of criminalization of the state, as well as its economy and political infrastructure. The basis for such conclusions is the analysis of the development of the shadow economy in Ukraine, which share significantly exceeded 50% then. A similar level of the shadow sector (i.e. 50% of GDP) was also stated by World Bank experts[4]. According to official statistics, about UAH 230 trillion was in the outbound bank circulation (40% of the total money supply of the state). At the same time, it should be taken into account that a significant amount of shadow commodity-currency transactions were carried out in Ukraine with the use of foreign currencies, namely US dollars in the first place. This currency money supply was not controlled by the state at all. At the same time, according to A.Paskhaver estimates, more than USD 10 billion of cash was accumulated in Ukraine at that time.

[4] Даніель Кауфман.Час-time. 08.12.95.

According to the data of the National Bank of Ukraine, the volumes of foreign currency cash usage in Ukraine are as follows: in October 1994 the volume of foreign currency exchange amounted to USD 70 million, in December 1994 – it was already USD 211 million, and in August 1995 – USD 868 million. At the end of 1995, the volume of Russian rubles exchange constituted 7% of the total money supply, and in September 1995 it accounted for more than 20% already. Thus, in 1995, the process of shadowing the economy was not stopped. Moreover, the shadow economy sector has grown by at least 25-30% (as compared to 1994) and has reached such a limit when the state has lost the possibility of a real impact on economic processes. The economy has become almost unmanageable. Half of the economic potential functioned uncontrollable or under the direct control of criminal structures and was not subordinate to the state.

At the same time, the entire shadow economy cannot be only identified with the criminal one. The shadow economy is also a result of the search of enterprises for ways of self-preservation in the conditions of total tax pressure, which makes it impossible for them to function in the legal field. It is the shadow economy that has helped to prevent the collapse of hundreds of industrial and agricultural enterprises and to save at least 2/3 of Ukrainian citizens from impoverishment.

The head of the SSU (the Security Service of Ukraine) A.Radchenko noted that for 2.5 million Ukrainian citizens the shadow economy was the main source of income and that up to 40% of young people in large cities and border regions were employed in the shadow sector[5]. The criminal sector is characterized by deliberate evasion from the actions of state regulators, the redistribution of officially or unofficially produced goods, illegal use of state resources, the appropriation in one or another illegal form of profits from the sale of goods or services, theft, fraud, racketeering, drug trafficking and other types of criminal activity. To determine the correlation between these sectors, one of the criteria for illegal revenues from foreign trade operations can be taken. Thus, according to expert estimates, shadow capital exports in 1991 amounted to USD 3.9 billion; in 1992 – USD 3 billion, in 1993 – USD 2.9 billion, in 1994 – USD 2.5 billion, in 1995 – USD 2.6 billion, which in general amounted to approximately 20% of the total cost of the goods and

[5] Радченко А. Незалежність.09.08.95.

services export in that year. It should be noted that the shadow economy was a source of income of at least 75% of the population, when the foreign economic operations that were carried out for benefit of people did not even make up 1% of the population of Ukraine.

Certain notions about the scope of the criminal sector of the economy were given by official statements of the leaders of Ukrainian law-enforcement bodies. Thus, the head of the SSU V.Radchenko disclosed that 40-50% of the financial capital in Ukraine had a shadow origin[6]. Deputy Interior Minister Y.Vandin said that the currency turnover of shadow structures amounted to 8 to 10 billion dollars[7]. Vice Prime Minister V.Durdynets reported that for 9 months of 1995, Ukraine exported barter goods at USD 1.98 billion. More than USD 1 billion was left abroad[8]. These and other indirect indicators testified that the criminal sector of the shadow economy was a significant part of the economy and, according to some experts, was at least half its volume in general.

Here are the main conclusions based on the analysis of the shadow economy in Ukraine as of 1995:

1. The state loses the possibility of a real economy management, since more than half of economic activity is informal in nature and it is not subject to state regulators. Key state authorities lack knowledge of objective macroeconomic indicators. For example, it is considered that in 1994 gross domestic product accounted for 38.9% of GDP in 1989. In reality, it was 74.3%. This deforms the understanding not only the people, but also the state officials about the objective state of the economy and it also complicates the formation of an effective economic policy.

2. The shadow economy destroys the economic system of the state. Concentrated capital is not aimed at investing in national production, it cannot be used to support social infrastructure and it objectively contributes to the growth of the pressure on tax, which, in its turn, drives economy even more into the shadow.

3. The shadow economy has an anti-national character; it interferes with the formation of a large legal national capital. The main free financial resources formed in this sector are sent abroad to ensure their protection. The national economy is depleted, while simultaneously investing in the economies of other states. According to expert estimates,

[6] Радченко А. Незалежність.09.08.95.
[7] Вандін Ю. Фінансова Україна. 25.07.95.
[8] Дурдинець В. Голос України. 25.11.95.

from 1991 to 1995 about USD 15-20 billion was illegally exported from Ukraine. The shadow economy has created a certain investment vacuum, which began to be filled with foreign capital, primarily from the CIS states. It put the national economy not only under significant external influence, but also led to serious political consequences.

4. Shadow economy corrupts society. It deforms the consciousness of people and makes them be accustomed to the ignorance of the rules established by the state and leads to legal nihilism. New market relations are identified with unlawful activity by the public consciousness, which forms the psychological resistance to reforms as a result.

5. The shadow economy is the economic and financial basis for the formation of a parallel state power infrastructure.

At that time, political power was not able to inflict a devastating blow on the Fifth Estate without limiting the scale of the shadow economy and, in particular, its criminal part. In turn, the shadow economy cannot be brought under control by the efforts of law enforcement bodies or as a result of a one-time political or economic campaign of any level of activity.

The shadow economy can be narrowed only as a result of deep economic reforms and radical changes in the current economic regime. This is confirmed by the practical experience of the government that ruled at that period of time. Thus, the abolition of quotas and licenses in foreign economic activity, the fixation of the exchange rate, the alignment of domestic prices and prices in the international market on a number of types of products actually eliminated the whole scope of the sphere where excessive shadow capital was formed. At the same time, the national economy of the state was losing the necessary resources.

The first group of these changes is connected with the elimination of the transit status of the former state-owned property. This property was in fact no longer state-owned. But it did not yet receive other owners as well. In fact, it was managed by the heads of enterprises, ministries and departments, the regional elite, representatives of the higher echelons of the state, who also accumulated their own capital at its expense. That is why in Ukraine, the most profitable business is political power, as it was before and it is nowadays too.

Let’s consider what processes are a real measure of criminal power in Ukraine in the years reviewed. The volume of capital illegally exported

abroad during 1995 amounted to approximately USD 15 to 20 billion. According to the then deputy head of the SSU, A.Belyaev, 60% of the capital was in the hands of criminal structures. According to the US FBI data, in 1992-1993, organized criminal groups (racketeer-criminal groups) of CIS countries illegally took more than USD 15 billion to the West. For comparison, it can be noted that the total budget of the General Prosecutor's Office of Ukraine, the Security Service of Ukraine and the Ministry of Internal Affairs of Ukraine for 1996 amounted to UAH 79.7 trillion, or about USD 400 million. The Fifth Estate then established its own so-called tax system. According to the SSU, 90% of firms were under the influence of criminal groups. Mafia exercised total control over the commercial and largely over the state trading network. In this regard, the consumer was forced to pay 20-30% more for goods and services. The people actually had to maintain two parallel powers – legitimate and criminal ones at their own expense[9]. The shady clans actually controlled the distribution of all marketable products of Ukrainian production in one form or another, the volumes and types of which decreased annually, partially due to the non-return of funds that should have been used to reproduce production. For example, in 1994, Ukraine did not receive back USD 3.2 billion. 46% of the exported products remained unpaid. In early 1995, almost 600 enterprises had debts for export products[10]. Much of the capital accumulated in Ukraine was of a criminal origin. Thus, according to the Center for Sociological Studies data published in the magazine «Modernity», 82% out of 1000 rich people stated that the main source of their capital was gained by theft, racketeering, currency transactions, and through public service, where they received bribes, holding positions in power. All this gives grounds for asserting that the criminal structures in Ukraine were disposing the funds comparable to the state's financial resources.

The criminal subculture integrated into all elements of the state system, society as a whole, and almost paralyzed their ability to self-defense. In fact, there is no influential social force in Ukraine that is interested in combating economic and political criminality and elimination of the shadow economy. Criminal-shadow activity is economically viable for managers of state enterprises and entrepreneurial circles. Illegally accumulated funds are used to finance a significant part of the media and dependent journalists. These

[9] Президент України Л. Кучма. Виступ на розширеному засіданні Координаційного комітету по боротьбі з корупцією та організованою злочинністю. Урядовий кур'єр. 02.02.1995.

[10] Дані Міністерства економіки України. Фінансова Україна. 15.08.95.

financial sources are used directly or indirectly to finance practically all political parties and movements, irrespective of their political views. According to the SSU, 60% of Mafia clans had corrupt connections in various power structures and bodies. Almost 40% of enterprises and about 90% of commercial structures had connections with corrupt officials. More than 60% of average official's income is gained out of bribes. Attempts were made to integrate people directly from the criminal environment into the power institutions. According to the Ukrainian Center for Economic and Political Studies (UCEPS) experts, about 40 representatives of criminal groups were elected to take positions at different levels during the elections by people's deputies in the Autonomous Republic of Crimea. The following fact testifies that the authorities were used by the criminal elements to protect themselves against prosecution. According to the materials of the committees of the Verkhovna Rada of Ukraine during 4 years (1990-1994) more than 500 deputies of the local Councils, who were accused of committing crimes, were not brought to criminal responsibility, due to the fact that the Councils simply did not give permission to do that. Every sixth deputy who should have been prosecuted has committed two or more crimes. The absolute majority of these deputies, namely 83% are officials. In 1995, police detected crimes involving 106 civil servants, 79 law enforcement officers, and 30 MPs of various levels. There were well-known cases when some political organizations were formed directly on the basis of criminal groups. Quite a vivid example could be the creation of the Christian Liberal Party in the Autonomous Republic of Crimea, which was headed by a well-known criminal authority. Criminality from the CIS states, in turn, attempted to influence political forces in other states.

At that time, an extremely high level of social impoverishment of the population was formed in Ukraine. According to the Ministry of Statistics of Ukraine, 72.1% of the population was below the poverty line (UAH 4.8 million). The average salary (UAH 8 million) was officially received by 1.7% of the population. More than UAH 9 million was received by 4,5% of the population. However, these people did not have reliable mechanisms for countering criminality. Their expression of will during the elections had a single-action nature and it could not be guaranteed at all that the authorities would exercise their power to fulfill their own obligations stated at the election. At the same time, insecurity pushed people to illegal activities. Thus, according to a survey conducted by Socis-Gelap, in Ukraine at the end

of 1995, 16% of the population considered the possibility of making sufficient earnings through racketeering and theft, while another 15% – through foreign exchange operations.

As of December 1995, more than 580 thousand crimes were detected in Ukraine, which is 13.5% more than it was in 1994. Also, 1840 facts of bribery were detected, which is 19.4% more than in the previous year. At the same time, the number of economic crimes is constantly increasing: in 1991 there were detected 34,838 crimes (+15.2%), in 1992 – 36,860 (+5.8%), in 1993 – 41,253 (+11.9%), in 1994 – 57500 (+13.5%), in 1995 – 57500 (+34.4%) of crimes, respectively. Such statistics not only demonstrates the strengthening of the common-crime potential in the state, but it also confirms the fact that in 1995 the tendency of criminalization of society failed to be eliminated.

Mafia structures establish and develop international relations. This topic was the main one discussed at the Central European Symposium on the Fight Against International Organized Crime, held in December 1995 in Budapest. It was also noted there that «Eurasian» criminal groups that emerged in the post-Soviet space, became more powerful and they quickly expanded their activities to other states. The speakers at the conference emphasized that the actions of more than 300 criminal groups, which were formed on the territory of the former USSR, had international character.

According to the statements of the foreign press, after the unsuccessful attempt of the former acting Prime Minister of Ukraine Yuri Zvyagilsky to place in the one of Israeli banks about USD 300 million in cash, the government of this country in a closed meeting adopted a special decision, which provides for a significant intensification in counteracting the mafia from the former USSR. In this context, it is worth noticing the estimation of international organized crime group’s activity, which was covered at the 9th Congress on Combating Crime held in May 1995 in Cairo under the auspices of the United Nations. It was also noted that organized crime uses state of the art technology and international connections much more effective than the states of the United Nations.

The stage of professional growth of organized crime, as well as the seizure and redistribution of public property in Ukraine. This was the period from 2000 to 2010, when the second and third stages of the privatization process took place in Ukraine. In our opinion, the first stage of privatization with the use of privatization securities, namely property certificates, was a

sort of distracting maneuver (in particular, restructuring of social consciousness: socialism – capitalism) in the form of a mild transition to a large so-called "grab-what-you-can privatization" of the industrial complex of the state. This period is characterized by the absence of any systematical legal regulatory policy, support of state enterprises and conscientious entrepreneurs.

The stage of anchoring members of organized crime in the state authorities and administration bodies. Such penetration of organized crime group's members was aimed at influencing socioeconomic processes in the state to provide a reliable cover for criminal and other types of persecution for further unlawful activities aimed at the accumulation of profits. These processes began after the financial and economic crisis and the easing of the privatization process (2010), which led to inhibition and reduction of revenues from privatization into the budget. Taking advantage of its influence on imperfect administrative processes in the economy and finances in the state, organized crime combines its efforts with the aim of mercenary and violent influence on the state apparatus. Organized criminal structures become more hierarchical, conspired and penetrate their corrupt leaders at higher levels of state power. They seek to expand the scope of their illegal activities inside and outside of Ukraine. Organized crime integrates into highly profitable sectors of the economy and financial sector, which poses a real threat to the national security of Ukraine. Such a transformation of the organized crime groups has led to the fact that the state has no objective and honest information on the extent of organized crime and the level of corruption in the economy and finance. This is facilitated as well by dependent private media that allow organized crime not to uncover their activities, to avoid excessive attention from authorities, law enforcement agencies and the general public too. Special units for combating organized crime were eliminated. That was happening at a time when the economy and the financial system of the state became the core of organized crime. The systematic violation of economic market laws and legal norms pursues only one purpose – the further unlawful accumulation of capital and exorbitant enrichment. There was a change in the activities of organized criminal groups, as a result of which part of the shadow economy became an element of the symbiosis of criminal and legal economic structures. Organized massive theft of state material resources, including natural and financial resources as well, has been widely scaled up, as evidenced by recent

criminal proceedings in Ukraine. The received illegal proceeds are washed off through a complex system of fictitious transactions and banking operations and settle on accounts in foreign financial structures or are refunded back to Ukraine as under the guise of investments or are used for buying real estate. To take possession of the Ukrainian land was their next step. The banking system of Ukraine has become a large monopolized and politicized closed-end structure that does not provide transparent and open financial reporting, and is not ready for the creation of audit and control committees for assessing possible financial risks. Non-transparent banking activity, non-compliance with the principle of social responsibility contributes more to speculative deals and quick super-profits. According to various estimates, in the period from 1991 and up to date, approximately USD 150 billion has been withdrawn from Ukraine to the offshores. Due to the use of offshores, our state loses 200-300 billion hryvnia annually. This is about a third of the state budget[11].

To overcome organized crime and corruption, it is necessary to carry out the state policy of complex measures of socio-economic, organizational, managerial, legal nature on the basis of scientific research of these areas of social activity[12], since even the super-amplification of law-enforcement bodies cannot become decisive and bring the desired results. We believe that market mechanisms at the present stage are effective stimulators of economic development, but they should be under public control. The profits and sizes of private property should be relevant to all forms and weight of the share of the joined efforts of each individual, but not just a small group of powerful, cynical, immoral and heartless people who, using such features, unfairly possess the results of common social work[13].

2. The Consequences of Corruption Crime in Ukraine

In the years of his presidency, Leonid Kuchma also drew the attention of the public to the fact that corruption significantly influences

[11] Грощі – на райських островах: Україна щороку втрачає третину держбюджету через офшори. URL: https://expres.online/archive/news/2018/01/12/280097-groshi-rayskyh-ostrovah-ukrayina-shchoroku-vtrachaye-tretynu-derzhbyudzhetu.

[12] Романюк Б. В. Безпека держави вимагає ефективних заходів боротьби з організованою злочинністю. Боротьба з організованою злочинністю і корупцією (теорія і практика). 2007. № 17. С. 3–21.

[13] Романюк Б.В. Трансформація сучасної організованої злочинності в Україні. Україна в системі сучасного міжнародного правопорядку та Європейської інтеграції: загальнотеоретичні та практичні проблеми: матеріали між нар. наук.-практ. конф. 18 груд. 2018. Київ: Таврійський нац. ун-т імені В. І. Вернадського. 2018. С. 156–158.

the formation of state power in Ukraine. In the executive branch of government, such situation still exists mainly due to the fact that it is required to pay bribes for being appointed for a position in power, regardless of the business qualities of the candidate, and the decisive factor will be if the candidate has any relatives in power and if he is personally loyal enough (in other words: «does not matter who you are, but what is important – who is supporting you»). Manifestations of corruption in personnel policy at the higher levels of executive power are the most dangerous, since top-level executives create their own hierarchy of corrupt relations that penetrate through all levels of government. At the same time it will be impossible to take that or another position, based solely on the professional and personal qualities of the candidate. The decisive factors here are the benefits to be provided for being appointed, family and friendly relations with senior executives, and connections with other influential people. It happens often that the personnel decisions in the power structures are taken only formally. In fact, they are taken outside of their own offices by influential businessmen, heads of organized crime groups that control one or another region or area of activity. Such cases are reported by domestic and foreign mass media, government leaders, law enforcement agencies, and well-known politicians. Referring to the heads of law enforcement bodies, during his presidency of Ukraine, L.Kuchma stated: «There are about two and a half thousand criminal gangs registered in the internal affairs bodies. Just think about that! Two and a half thousand armed and ready for anything groups. However, you keep assuring the leadership of the state and society that you know well about them and their sphere of influence and that you handle the situation"[14]. Speaking about the corruption of the Ukrainian authorities, the People's Deputy of Ukraine O. Moroz pointed out: «The power is not exercised by the official structures, but by the oligarchs and clans instead"[15]. According to the Security Service of Ukraine, 60% of

[14] Ленид Кучма. «Так дальше длиться не может». Выступление на заседании Координационного комитета по борьбе с коррупцией и организованной преступностью при Президенте Украины. 16 февраля 1998. Урядовий кур'єр. 19 февраля 1998. Коррупция в Украине:сущность, масштабы и влияние. Центр Разумкова. URL: http://www.razumkov.org.ua/ukr/article.php?news_id=200.

[15] Читайте и сравнивайте, решайте и голосуйте. Коррупция в Украине: сущность, масштабы и влияние. Центр Разумкова. Крещатик. 29 октября 1999. URL: http://www.razumkov.org.ua/ukr/article.php?news_id=200.

mafia clans have corrupt connections in government bodies and administration[16].

At a meeting of the Coordinating Committee on Combating Corruption and Organized Crime under the President of Ukraine that was held on April 20, 2000 information on the business activities of parliamentarians was made public for the first time. According to the State Tax Administration, 364 people's deputies of Ukraine at that time had official income gained through commercial structures. Parliamentarians then headed 202 enterprises and were the founders of 473 enterprises. In general, people's deputies had a direct or indirect relation to the economic and financial activities of 3,105 enterprises. In 1999, these enterprises imported raw materials and consumer goods into the territory of Ukraine to the amount of UAH 13.2 billion (25.3% of Ukraine's imports); and exported goods to the amount of UAH 5.2 billion (10.1% of Ukraine's exports). According to the results of economic activity in 1999, the aforementioned enterprises had revenues to the budget in the amount of UAH 4.1 billion[17].

So, let's consider what really was going on in the state. Ukraine, having become independent state, proclaimed the foundation of a new democratic society with all the freedom of action, including the sphere of economic and other relations as well. The old state institutions of power were terminated or undermined and the staffing of state institutions was undergoing significant changes. Many new people came to the leadership of state institutions, who did not have any political or managerial experience and moral standards, but they had only desire to break anything old and build something new. With proclaimed freedom of action, uncontrolled processes in the development of public administration took place, which gave rise to chaotic processes in the economy, financial and social spheres. Production started to go down and there was a shortage of working capital in the state. Due to such lack of control in society, chaotic privatization together with other fraudulent actions of primary accumulation of capital started to boom. Soon after, redistribution of wealth through raider hijacking of enterprises started to take place.

[16] Камлык М., Гега П., Вилецкий В. О проявлениях организованной преступности в производственной и управленческой сферах экономики. Борьба с организованной преступностью и коррупцией. 2000. № 1. С. 23–24.

[17] Десятникова И. В. прошлом году наши граждане приобрели свыше пяти тысяч престижных «шестисотых» «Мерседесов» по цене от 100 до 300 тысяч долларов. Факты. 2000. 22 апреля.

Under those conditions, a deep comprehensive study of the reasons for such a situation was not made and a general national program for building a new society in Ukraine was not worked out as well. Even the development of a mechanism for the decriminalization of capital and the work of well-known economists of Ukraine on the development of the renewed society economy was ignored[18]. In most cases, a new formation of society in Ukraine was build based on thoughtless introduction into practice, and often deliberate, purposeful and distorted copying of the capitalist systems of the Western states power. They also did not take into account the specific platform for their application, namely the post-communist environment and ideology.

For the implementation of those rules, the performers without moral and ethics were required. And they were found of course. That was a new generation of Ukrainian, which grew and was formed in those specific conditions of imbalance of political, economic, social and cultural relations of the so-called period of Gorbachev's perestroika in the former USSR, during its collapse and building of an independent Ukraine as noble goal of many generations. However, besides the overall goal, the Ukrainian political elite did not have even a single clear and coherent strategic plan for national revival of an independent state, and had no clue about the structure and organization of the future society, cultural policy and ideas for unification of all the people of Ukraine.

The absence of the latter was replaced by the ideas of the private capitalist ideology of the accumulation of wealth, privileges, etc. without any rules. Instead, there were subjective views on the rules of state development in certain circles of the new generation of Ukrainians who imposed them on the society. Some «new Ukrainians» rather quickly became very rich and came to the power[19] through following the new philosophy that they created themselves, i.e. that money is influential, though not possessing moral principles with that.

Very evident in this regard is the selfish accumulation of cash capital in the banking system that predominantly arose on loans in various and not always legitimate methods of state financial resources, and which was working only for its own benefit, but not in favor of the state economy and the welfare of the general population. For example, in 2004-2007,

[18] Будкін В. Постсоціалістична трансформація власності. Економіка України. 2007. № 2. С. 39–44.
[19] Вакарчук С. Майже весна или люди будущего. Зеркало недели. 2007. 8 дек. № 47. С. 2.

banks' assets grew more than fourfold and amounted to more than USD 100 billion, which is an average of 60% per year and that is far exceeding nominal rates of economic growth. Banks attracted large amounts of cheap foreign credit resources, while in the domestic market they maintained high lending rates. The banking system is now a large monopolized and politicized closed-end structure that does not provide transparent and open financial reporting, auditing and scientific verification of possible financial risks. This is evidenced by the audio recording conversations that were made public by the mass media in 2015 on which the Deputy Chairman of the Board of the National Bank of Ukraine, Katerina Rozhkova, testified to corruption in banking system and undermining the national interests of the state, by the way, which was stated before by the people's deputy of Ukraine from the party «People's Front» Anton Gerashchen[20].

Even the field of science became a sort of the certain brand for «new Ukrainians.» Let us recall the mass and undeserved appropriation of their degrees and scholarly titles. Having large funds or administrative levers, they forced scientists and members of specialized scholars and expert councils to work for them. Such applicants for prestigious scientific titles, due to their preoccupation or their intellectual potential, in fact, are not related somehow to the scientific achievements reported. But low-paid scientists have already come to terms with this situation, so they work for the customers of the dissertation and give their good to undeserved award to such applicants of scientific titles. The name of Kirilenko Katerina, the wife of Ukrainian politician V.Kirilenko, became a common name in Ukraine in connection with her doctoral dissertation on pedagogical sciences that she protected in 2015, which caused a scandal in scientific circles and was recognized by many well-known scholars of plagiarism and pseudoscience. The case got so much publicity that this scientist got into the Ukrainian Wikipedia as a most famous plagiarist.

The fact that a low-paid person from science cannot always be free in his assessments and actions is a dangerous situation to the state and society. Fake scholars are illegally receiving wage supplements, posts and life-long social payments from the state, which is pure corruption. On the other hand, talented, but low-paid scientists are forced to leave Ukraine

[20] Антикорупційні органи повинні відреагувати на оприлюднені записи розмов, імовірно, заступника голови НБУ Рожкової – Геращенко. URL: https://ua.censor.net.ua/video_news/416565/ antykoruptsiyini_organy_ povynni_vidreaguvaty_na_oprylyudneni_zapysy_rozmov_imovirno_zastupnyka_golovy.

massively. Today, the salary of a scientist is equal to the street cleaner of a multistory building. This of course had an impact on the state of science in Ukraine. During the period of special popularity in the acquisition of academic degrees and titles, the number of scientists during the years of independence has grown almost three times, and the number of actual performers of the highest qualifications in scientific and technical works has decreased twice. As a result, promising directions of research were put on hold; scientific schools were destroyed, and so on. Even the National Academy of Sciences of Ukraine occupied only 677th place in the world in 2007 with regard to such an important indicator for the level of science as the citation of the works of scientists from all disciplines. According to Clarivate Analytics, in 2017 in the list of three and a half thousand most cited authors of the world the first place in the number of quotes in magazines from the Web of Science took the American scholars, the second – the Canadians, the third – the Chinese. And there was not even one representative of Ukraine[21].

Cynicism of free actions in the accumulation of capital in spite of all morality and humanity has recently been manifested even in relation to natural and constitutional rights, life and health of man. Today, criminal business enrichment on human beings and drug trafficking is increasing rapidly, which threatens to whole nation.

Ukraine has not yet created a democratic system of public administration, which would be based on a clear separation of functions and powers of the branches of power, the division of positions in their structures into political and professional bureaucracy, an effective institute of selection, education and certification of personnel. This is evidenced, in particular, by fake competitive selections to senior management positions of civil servants to newly created anti-corruption government agencies about which so many complaints are received from the public and which raise so many questions to the authorities as well. We can recall as an example a scandalous appointment with gross violations of the law and bypassing the competition of the Deputy Minister of Justice of Ukraine, 30-year-old A. Yanchuk, who had no experience of managerial work. Later, again with the violation of the law, this candidate was subsequently appointed to a position of the President of the National Agency for the

[21] Зомбі-академія: вчені-пенсіонери НАН України не витримують конкуренції у світовій науці. Їх утримання коштує близько 3,7 млрд. грн. url: http://texty.org.ua/pg/article/editorial/read/82121/Zombiakademija_vchenipensionery_NAN_Ukrajiny_ne_vytrymujut_konkurenciji?a_srt=&a_offset=7.

Detection, Investigation and Asset Management of Corruption and Other Crimes[22]. Thus, each of the branches of power tries to take a higher managerial level for taking preferential solutions in various ways and by different methods that are related to the administration of state property, finance, etc. Professional managers are completely controlled by nonprofessional politicians and serve them faithfully, but not the people who elect them for the honest management of the state's affairs in favor of people's interests. Therefore, in Ukraine they come to the post «... with the hope of obtaining unlimited powers in order to control the cash flows in the industry and promote their people"[23].

It should be noted that the paternalistic policy of Soviet power destroyed the self-respect of people, also the faith that they can change something and that they have also some power, but at the same time it also generated the fears, so, as a result, they could only hope for the better future. The Russian and Soviet empires in order to manage Ukraine rather violently adhered to the principle of «divide and rule» in the aspect of imposing an ideology of contrasting the culture, customs and aspirations of the Ukrainian people of different parts of the state: east, west and south. Thus, various styles of national consciousness and culture of the united people groups in different regions were formed for building constant hostility and distrust in the state. Consequently, the process of building a new independent state was complicated not only by political and economic reforms, but other factors as well. In the young state of Ukraine there was not noted the required level of experience in building and managing the new society and the issues of religion, language, etc. had to be solved as well. A significant part of society, being very disappointed with the ineffective actions of the authorities, does not trust the courts, which should stand in defense of the rights of people. That's why citizens had to solve their problems seeking for help of the organized criminal structures and also by bribing officials, which really gave them so much needed quick results. The representatives of the state apparatus and

[22] Іванова Наталя. Жити по-новому, призначати по-старому: кадрова політика Мін'юсту. URL: http://ua.racurs.ua/634-jyty-po-novomu-pryznachaty-po-staromu-kadrova-polityka-min-ustu;

Бусол О. Як зберегти корупційні активи для Януковича? (деякі роздуми після Глобального форуму з повернення активів в США 4–6 грудня 2017 року). Юридичний вісник. № 50 (1171). 15–21 грудня 2017. С. 12–13.

[23] Ведерникова И. Опасный диагноз, или почему государственная машина еле дышит? Зеркало недели. 2007. 15 дек. № 48. С. 4.

citizens themselves are not fully aware of the pernicious nature of this method since they lack a proper legal culture. The harsh repressive measures will not bring the desired result in counteracting organized crime and corruption as well. It is necessary that the conscious people have a real understanding of the need for measures to be taken that would meet the compromise of the interests of all: the representatives of the government, business and other segments of the population.

When it comes to finding alleged ways of confronting these phenomena, in most cases there is deliberate focusing on allegedly objective difficulties in solving traditional issues of improving the form of activity, the structural organization of the law enforcement bodies and courts, and their departmental subordination. In certain cases, the intentional focus on such issues is obviously beneficial to those for whom a strong and effective law enforcement system is hampering the process of their own enrichment. On the other hand, they sometimes forget about the above-stated difficulties they stated themselves and they keep imposing their deliberate point of view while creating some new and special investigative bodies. Some politicians draft laws on the creation of additional law enforcement structures with the intent to manage them, because such a corporate structure is easier to be controlled and used in the fight against their political or business opponents. Such situation is possible only in the states with undeveloped democracies or, in general, with despotic forms of government. Here we can bring an example of such state as Guatemala and its anti-corruption court, which was declared by our domestic reformers for some reason as a leader in the fight against corruption[24].

The danger to the nation is the practice of replacing the positions of the first leaders by representatives of political parties. Such leaders interfere in personnel, operative-search and administrative-procedural activities often in the interests of their political party. The constant turnover of these politicians, their permanent perturbation, the dismissal of professionals, unwarranted staff cuts and obscure structural adjustments have led to the outflow of honest, professional staff, young ambitious

[24] Бусол О. Зменшення рівня корупції не залежить від створення чисельних спеціалізованих інституцій, а від бажання й політичної волі влади». Юридичний вісник України. № 5 (1125). 3–9 лютого 2017. С. 12–13; Бусол О. Сербія, Словаччина і Гватемала – будемо наслідувати приклад? (щодо створення спеціалізованого антикорупційного суду в Україні). Конституційний процес в Україні: політико-правові аспекти. 2017. № 1. С. 3–11.

officers of law enforcement and judicial authorities, and, consequently, the decline in the efficiency of their activities.

CONCLUSIONS

1. The political leadership of the young independent Ukraine failed to stop corruption. The above-mentioned processes have led to a national threat, to the impossibility to control the economy, to its exhaustion and they also contributed to the development of criminal add-ons. Criminality in Ukraine has become a political phenomenon. The Fifth Estate became equal to the state power as for certain parameters. The criminalization of economic and political life in Ukraine undermined its international prestige, created favorable conditions for strengthening authoritarian tendencies, and objectively became the basis for the emergence of a new totalitarian state.

2. The fight against shadow power and its criminal superstructure is directly linked to in-depth reforms, long and wide-ranging anti-criminal measures. However, the new political leadership underestimated the real power and capabilities of The Fifth Estate and the shadow economy, and it failed to fully implement the revealed political will to fight corruption and organized crime.

3. Law enforcement agencies were not able to independently eliminate corruption. From the very beginning it was necessary to involve the whole society in opposition to this phenomenon. It was also necessary to apply radically new technologies to fight with it, providing an appropriate financing for that.

4. The activities of the mass media (The Fourth Estate) should be independent and focused primarily on the analytical coverage of this phenomenon, on the creation of a supportive social and moral environment for combating it, and the formation of a truly civil justice.

5. Organized crime in Ukraine is highly professional and politicized. Oligarchic criminal clans, possessing material and financial resources, are luring the professional personnel, including law enforcement agencies to serve their interests. They created a specific system of power to support their activities, and therefore the state is at such a stage of development, when it requires extraordinary and effective approaches to counteract corruption.

6. Reverse processes of budget expenditures for a certain political purposes, also the reduction of expenditures mainly of managerial categories of state employees and paramilitary structures, have led to poverty of both the population and government personnel, and it weakened the efficiency of the activities of state institutions as well. For insufficiently protected law enforcement officers it is hard to resist rich and secure offenders. Therefore, they need full social protection at the expense of the state budget not only during their period of service, but also on their retirement. Today, professional managerial staff and law-enforcement officers are forced to take jobs from private owners, and all their knowledge, experience and information of state importance they often have to pass not in the interests of the state and society, but in the interests of criminal organized structures instead.

7. We are currently witnessing moral impoverishment and distortion of public consciousness. For these reasons, Ukraine creates privileged conditions for freedom of action and the accumulation of wealth only by the rich. Under such conditions they act contrary to moral standards. Without proper control, especially from the law enforcement agencies, the most brave rich people conduct raider redistribution of property, finance contract murders, hide their profits from the state. Besides, they lobby for the rejection of laws on progressive taxes on property, real estate, etc. Acquired capital thus passes to citizens of other states[25]. Therefore, now, the priority task for the Ukrainian authorities and society is to prevent further economic takeover of the state by the transnational mafia.

SUMMARY

Organized corruption in Ukraine has an ancient background. It has gone a long way from being primitive to becoming perfect one. At each stage of development there was a transformation of its form and essence. Many new people came to the leadership of state institutions, who did not have any political or managerial experience and moral standards, but they had only desire to break anything old and build something new. With proclaimed freedom of action, uncontrolled processes in the development of public administration took place, which gave rise to chaotic processes in the economy, financial and social spheres. The above-mentioned

[25] Романюк Б. В. Безпека держави вимагає ефективних заходів боротьби з організованою злочинністю. Боротьба з організованою злочинністю і корупцією (теорія і практика). 2007. № 17. С. 10–15.

processes have led to a national threat, to the impossibility to control the economy, to its exhaustion and they also contributed to the development of criminal add-ons. Criminality in Ukraine has become a political phenomenon. The political leadership of the young independent Ukraine failed to stop corruption. Mafia structures establish and develop international relations. The Fifth Estate became equal to the state power as for certain parameters. The criminalization of economic and political life in Ukraine undermined its international prestige, created favorable conditions for strengthening authoritarian tendencies, and objectively became the basis for the emergence of a new totalitarian state.

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THE IMPROVEMENT OF LEGAL REGULATION OF YOUTH JOB PLACEMENT IN UKRAINE

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INTRODUCTION

The Constitution of Ukraine defines a socio-economic right as one of the most important human rights. It is not possible to ensure both dignity and existence of human personality without these rights; all other rights lose their sense to some extent without them. The central place belongs to the right to labor and its objective precondition such as the right to job placement.

In view of recent changes in our country, the development of conception for our state development where a modern socio-economic situation would be reflected and, first of all, at labor market, is of great importance. The further improvement of legislation on job placement as well as practice of its implementation is essential political-legal task within the process of establishment of social and law-governed state in Ukraine. The creation of a new system should be based, first of all, on scientific comprehension of legal relations arising in this field, subject's legal status, their rights and obligations, taking into account the interests of the state.

Transition to market relations in the field of labor and employment accompanied by the processes of structural economy reformation leads to the formation of a fundamentally new model of socio-labor relations. Young people who are not ready enough to the modern realities of the labor market experience these processes to the most extent. The development of a mechanism for interaction of all participants in socio-labor relations (state, employers, local authorities, public organizations) in the field of stabilization of youth employment is an urgent and socially significant step under such conditions. In addition, the Ukraine-European Union Association Agreement opens up new market opportunities. The high standards of production that the EU can offer will stimulate national enterprises to upgrade production and improve working conditions. However, many Ukrainian companies not ready for a dynamic change will

be forced to go, which will reduce the number of job places. Moreover, the already high level of labor migration of Ukrainians to the EU countries will increase. This will negatively affect the national labor market. That is why it is important to change the rules of the game not only at the legislative level, but also to understand the value orientations of young people in the field of labor.

Youth is a socio-demographic group, whose life is associated with the future of society. It is this group that is considered as a leading factor in the intellectual development of society, a source of innovation and creativity. The study of youth labor values will allow stimulating young people properly for further work, which influence the whole functioning of the society, it will allow showing possible problems for the state in regulating the social policy of youth, helping in reveal of the complex relations and interactions of people in society, possible problems, determining the best ways to overcome them.

Today, in Ukraine, a set of measures has been formed to ensure a balance of interests of the labor market participants, to promote employment of the population and protection against unemployment. However, it should be noted that this set of measures requires to be improved in the terms of the present time. Moreover, national legislation does not pay enough attention to the problems of youth. The scientific analysis of youth employment problems which would allow elaborating specific recommendations and proposals with the aim of their further normative consolidation is required.

1. Value Orientations of Youth in the Field of Job Placement

Sociologists often view emotionally coloring ideas and judgments of the individual about the importance of his work in general and its individual parts as labor values. The peculiarity of labor values is a characteristic level of awareness, they are reflected in the psyche in the form of a system of value orientations and are an important factor in the regulation of labor relations and behavior in the group, they determine the tendencies of development of both personality and group[1].

Over the past decades, the proclaimed, approved and supported labor values of our society have undergone changes that in total allows asserting

[1] Герусова О. Ю. Місце трудових цінностей в системі ціннісних орієнтацій підприємців і молоді / О. Ю. Герусова, І. В. Шинкаренко // Актуальні проблеми економічного і соціального розвитку регіону. – Красноармійськ: КІІ ДонНТУ, 2011. – С. 59.

that the formation of new labor ethics is in process. Work on duty has become a right.

Labor values are in close correlation with educational ones. Universities under the influence of external factors are transformed into economic corporations which are run as corporations, but corporations of a special kind: associated with the production and dissemination of knowledge not only in Ukraine but also around the world. Students act as clients of the corporation, buyers at the market of educational services offered by the university. As a result, young people, faced with the real difficulties of choosing and building their professional career, often balance between unrealistic claims and passivity, full of reluctance to seek anything, discouragement in their own powers[2].

The most important directions for the development of modern high school are intellectualization of the educational process contents, introduction of new forms of learning, creating conditions for students, developing their creative abilities. Finally, all this should be reflected in the training of professionals who, under the market economy conditions, aggravation of the competition as the labor market will be able to solve the problem of job placement[3].

Timely and reliable information about the interests and life values of youth allows not only building the learning process more effectively, but preventing possible negative consequences of the unresolved problems as well, for example, the job placement of students and graduates, responding to changing demands of society in a timely manner. Such information is provided by regular sociological research.

For the analysis of youth labor values, the European Values Study (EVS) database was used in our study. EVS is a large-scale interstate study of universal human values. The surveys are conducted in the form of a formal interview. An adult population (aged 18+) is interviewed. The samples are representative of the countries. The sample in Ukraine was 1507 people. The youth makes 502 people out of all.

In defining the youth, we took as the basis Article 1 of the Law of Ukraine “On Promotion of Social Formation and Development of Youth

[2] Лов’як О.О. Бушинський С.В. Окремі аспекти судової практики щодо оплати праці у період реформування національного законодавства // Пріоритетні завдання та стратегії розвитку юриспруденції в Україні та у світовій науці : матеріали круглого столу (15 листопада 2016 р.) відп. ред.. І. С. Тімуш. – Дніпро: Середняк Т. К., 2016 – С. 34–38.

[3] Губарєв С. В. Трудове право України, посібник для підготовки до іспитів // Дніпропетровськ: Середняк Т. К., 2015. – 125 с.

in Ukraine", which stipulates that youth is "citizens of Ukraine aged 14 to 35"[4]. In our case, we use a group of 18-35 years old.

The attitude of youth to work differs in answering questions about its importance. Work is very important in life for 72% of young men, while for women, this number is 59%. However, if we talk about the importance of work in general, the difference will be reduced and makes 97% for men and 91% for women. At the same time, the importance of work decreases with an increase in family income. Thus, 72% of respondents who indicated a family income as low noted the importance of work in their lives. Among respondents, there are 67% with an average income: with a high income – 65%. In addition, the value of work increases with an increase in the educational level of the respondent. For 97% of respondents with a higher level of education, work is important, with an average level – 92%; with a low – 89%. However, taking into account only the answer "very important", for all educational levels the indicator is the same – 66%. This indicates that education preserves its main function of training for the future profession. Young people go to higher education because it is important for them to have work later.

In relation to labor values, then the most important for youth is the value of good salary taking the first place. It is slightly prevails in men. Most young people have difference in such values as "comfortable work hours", "long vacation" and "work with people". All these labor values are more important for women. This can be explained by the fact that women give more time to family and home matters, and therefore it is important for them that work and family do not interfere with each other. Regarding work with people, it is well-known that women are more social and like to communicate more than men. It is interesting that the value of "not very hard work" was noted more by young men. The less important were the values of the future style of the manager and the provision of social benefits. For women, more important values of "interesting work", "guarantee of a job place preservation" and "equal treatment of all employees". On the last two values one can judge the existence of sexism at the workplace. Young people have almost the same indicators for the rest of the values.

In addition, as a result of the analysis of respondents' responses, two main types of correlation between the expected remuneration and the

[4] Закон України «Про сприяння соціальному становленню та розвитку молоді в Україні» / [Електронний ресурс] – Режим доступу: http://zakon3.rada.gov.ua/laws/show/2998-12

planned expenses were revealed. The most widespread was the inverse correlation between expectations of high salary and readiness for labor dedication. This was reflected in the fact that the respondents who pointed out the importance of high salary and reliability of job place, highlighted at the same time the importance of long vacation, comfortable work schedule, lack of excessive pressure, but neglected such labor values as the opportunity to show initiative, achieve something, and get a responsible job. And, on the contrary, those who chose the initiative, success and responsibility did not attach great importance to high salaries and other values listed above. It was also found that respondents who gave high salary values a priority did not seek to communicate with people and bring benefit to society. In contrast, those who chose to communicate and bring benefit to people, as well as to avoid excessive pressure on work, did not mention their high salary values, career development opportunities, and job security. From this it can be concluded that people appreciate work either as a way of communication and service to society, or as an opportunity for a personal career.

The hierarchy of labor values of men and women is different (Table 1). Unfortunately, the active labor values of men and women remain on the last stages of the hierarchy.

Table 1

The hierarchy of labor values of young men and women

Young men	*Young women*
Good salary (98%)	Good salary (95%)
Good working team (78%)	Interesting job (80%)
Interesting job (74%)	Good working team (77%)
Work which allows building up new professional skills (59%)	Flexible working hours (65%)
Guarantees for job place preservation (59%)	Guarantees for job place preservation (65%)
Work that matches skills (58%)	Equal treatment of all employees (61%)
Ability to achieve something (57%)	Work that matches skills (60)

Equal treatment of all employees (54%)	Work which allows building up new professional skills (59%)
Flexible working hours (48%)	Ability to achieve something (57%)
Opportunity to show initiative (47%)	Long vacation (53%)
Long vacation (41%)	Opportunity to show initiative (45%)
Opportunity to take part in important decisions (40%)	Work with people (44%)
Not really hard work (39%)	Opportunity to take part in important decisions (40%)
Work with people (35%)	Responsible work (34%)
Responsible work (33%)	Not really hard work (33%)
Socially useful work (26%)	Socially useful work (27%)

According to the study conducted among students, graduates and employers, more than half of the interviewed graduates reported that they planed to work in their specialty (61%). The highest percentage of graduates devoted to their specialty was among the graduates of the economic (79%) and legal (90%) faculties. Another situation is in other specialties, especially among the graduates of physics faculty, where only 17% of the respondents plan to work in the specialty. Here, the highest percentage was of those who know for sure that they will not work in their specialty after graduation of the university (32%).

These ways of solving the problems of own employment, which young people use, allow making a conclusion that there is a rather high level of their psychological adaptation to the realities of the labor market. This is manifested in readiness for full employment, as stated by 63%, despite the fact that the majority of them were students of full time departments of higher educational institutions, who applied for part-time employment – 20%, temporal (occasional) employment – 13%, vacation employment – 4%. Young people really appreciate the level of job payment in various sectors of the economy: 57% have demonstrated the desire to work in the private sector, 18% – in the state, 18% – spoke about

a high level of salary as a criterion of choice, 7% – want to open their own business.

The terms of the job search on average were significantly lower than for the unemployed in general: 18% were looking for work less than one month, from 1 to 4 months – 51%, from 4 to 6 months – 12%, more than 6 months – 19% of those interviewed. Among the methods of finding a job, they give a preference to the help of relatives and acquaintances – 40%, apply to the services of private employment agencies – 25%; send CV to different organizations independently – 19%, apply to the public employment service – 8%, while trying to find work in other ways – 8% of those interviewed. It should be noted that 92% of the interviewed students and 89% of graduates believe that the university should have a job placement service.

Looking for help in finding a job, both students and graduates share the view that it is often not enough to have just a good education. Theoretical and practical skills of communication with the employer, appearance, knowledge of the psychological aspects of interviewing and the nuances of writing a CV became a precondition for successful employment. In this regard, a significant number of the interviewed students noted that they needed consultations on the state of the modern labor market – 46%, career planning – 12%, psychological aspects of interviewing – 15%, CV writing – 12%. 29% of the interviewed students expressed their desire to receive additional training (for example, studying foreign languages, working with the computer); 67% wanted to help them in finding a job. Graduates also require consultation on the labor market – 40%, career planning – 14%, interviewing – 17%, and CV writing – 11%. Respondents-graduates noted the necessity for help in finding a job (70%) and in obtaining additional training (28%).

Evaluation of the future employment prospects does not look optimistic yet: only 22% of respondents know where they will work, 40% are in active job search, 15% do not see any prospects on the job market, and 23% of respondents hesitated to answer this question. A widely-spread belief that the majority of students, especially senior students, are working, is exaggeration. Among the interviewed students 73% of them do not work. Among the reasons why students do not work in parallel with training in the first place – the difficulties of combining education with work (36%); the second – the lack of material necessity (22%);

further – the negative impact of work on the quality of education (13%); 9% of respondents appreciate their free time more than work and salary, and 8% – unable to find a job.

Many working students (39%) combine work with studying to gain experience in their specialty. It should be added that 9% of students in the process of work find the prospect of employment after graduation, 35% of the interviewed students work to be independent of parental help. At the same time, 52% are satisfied with their work completely, partly – 35%, completely dissatisfied – 13% of respondents.

Among the young people entering the labor market, every fourth person has no profession, and every seventh has no professional experience. For these reasons, young people receive denial of employment on average 1.4 times more often than the older age group (Table 2).

Table 2

The reasons for employers' refusal in employment

Younger than 35 years old		*Reasons*	*Older than 35years old*	
%	*Rating*		*%*	*Rating*
34,8	1	Lack of work experience	8,6	4
25,8	2	Young age	0,5	8
19,3	3	Not sufficient level of education, qualification	13,6	2
13,6	4	Lack of necessary abilities and skills	4,3	5
11,0	5	Requirements to salary	13,1	3
6,8	6	Presence of minor child	2,9	6-7
3,8	7	Health conditions	19,2	1
2,3	8	Lack of skills on how to behave during interview with employer	2,9	6-7

As a result of the study, it was found that representatives of enterprises and organizations highly appreciate on the scale from one to five the level of minimum requirements that allow admitting a person to

work, in particular, the requirements are as follows: on the theoretical and practical training of a young specialist (4.4 points); on the ability to make a decision independently (4.5 points); on the ability to communicate with people (4.5 points); on the ability to formulate a task and find a way to its solution (4.6 points). The highest requirements for graduates in relation to all of these parameters are established by banks. The requirements of commercial firms and private enterprises are also high, although slightly lower. The level of requirements for graduates from the state budget organizations is even lower. This is especially true of the practical training of a young specialist. Priority is given to the requirements for theoretical and practical training of graduates. Socio-demographic characteristics of graduates are important. Such a characteristic as age occupies the 5th place; graduate's gender – 6th place, with preference given to men; the marital status has 9th place, and the work is more often given to the married (and this requirement applies primarily to men). At the same time, the requirements for the orientation of a young specialist to professional and career growth are not significant.

Almost all employers negatively evaluate the quality of young workers, such as the lack of skills in working life and building relationships in the working team, instability of behavior, unnecessary emotionality, that is all that indicates the social immaturity of a person, the inadequate level of its socialization. However, it is in this particular case that the strongest influence of stereotypes on the mandatory presence of this kind of qualities is observed in all young workers without exception. The large scale and stability of the influence of such stereotypes leads to a discriminatory attitude towards the youth at the labor market. At the same time, it is obvious that the socialization of a person in society, although associated with age, takes place in certain people individually. The phenomena of infantilism and social immaturity can persist in a person until the end of his or her working life, and can be overcome at an early age, in the stage of professional training and formation. The competent construction of human resources policy in the organization involves the development of special programs that allow young professionals to adapt to the new role of hired employee and member of the working team[5].

[5] Губарєв С. В. Трудове право України, посібник для підготовки до іспитів // Дніпропетровськ: Середняк Т. К., 2015. – 125 с.

The discrepancy of employer's ideas with the real characteristics of young people entering the labor market is combined with hardly ever justified ideas of youth about ways of adaptation in the field of labor and employment. This is manifested in the choice of profession, and in the future – in determining the prospects of own employment.

The results of the study, described in the article by O. Drozhanova "Value-motivational factors of the attitude to the labor of employees of industrial enterprises", indicate that the thoughts of employees on the importance of work for them, although insignificant, but differ depending on age, and persons who has not reached the age of 30 years are the most pragmatic. Among young employees, in comparison with older employees (46 or more), there are 1.3 times more people who consider labor as a means of earning money, and twice less of people who agree with labor judgments as self-value irrespective of earnings. Such differences can be explained not only by age characteristics, but also by the effect of socio-cultural changes in society, which younger age cohort found at the stage of socialization. As an additional indicator of value attitude to work, orientation towards unemployment was used. In general, every fifth respondent (21%) expressed the desire to leave paid employment, another 18% could not make a conclusion[6]. Moreover, the younger and more educated the employee is, the higher his readiness to change the company, the more he believes that his earnings are lower than in other companies[7].

The research, described by L. Bevzenko in her book "The Lifestyles of Transitional Society", suggests that youth is more critical about the moral values of modern society and believes that for the sake of money, people can do almost everything. It is interesting that the statement "for the sake of big money people are able to work from morning to late evening" and "for the sake of big money people are able to take any job, only to be well paid" are the only statements in the age group of "up to 30 years" which has not the highest rate. That is, young people have a certain stereotype that people are ready for everything for money, except for individual and exhausting work. Young people perceive wealth as such that is dropping out of the sky.

[6] Дрожанова О. Ціннісно-мотиваційні чинники ставлення до праці робітників промислових підприємств / О. Дрожанова // Соціологія: теорія, методи, маркетинг. – 2007. – №4. – С. 92.

[7] Лов'як О.О. Бушинський С.В. Окремі аспекти судової практики щодо оплати праці у період реформування національного законодавства // Пріоритетні завдання та стратегії розвитку юриспруденції в Україні та у світовій науці : матеріали круглого столу (15 листопада 2016 р.) відп. ред.. І. С. Тімуш. – Дніпро: Середняк Т.К., 2016 – С. 34–38.

The research “The youth of Ukraine: Lifestyle and Value Orientations” has shown that in the hierarchy of life priorities of young people in Ukraine, the values associated with professional employment have a rather high place. 72% of young men and 67% of young women indicated that “good work and professional employment” are “essential”. Especially, there are a lot of young people for whom “essential” values are such values that are closely linked with economic activity and labor activity values like “economic independence” (69% of men and 59% of women) and material well-being (79% of men and 74% women).

The value of good work is important for young people, but it still plays a bigger role for men, while women note the value of education and knowledge more (49% of men and 57% of women). For men, the value of “high official and civil status” is important as well (40% of men and 31% of women). Young people almost equally appreciate the importance of such a value as “the possibility of development, implementation of abilities” (45% both for men and women). Most working young people are satisfied with their current job, evaluating it at 7 points out of 10. At the primary work, young people mainly work as hired employees (47%), and only 2% were employers and business owners. 45% of young men and 36% of young women would like to become entrepreneurs, but they are disturbed by different circumstances, 33% and 45% do not want to do it, respectively.

The results of the survey give an opportunity to form an opinion about the extent of prevalence of the knowledge, skills and abilities in the youth environment that are now highly valued in the employee: skills of working with computer technologies, knowledge of foreign languages, driving, skills to work with office equipment. Contrary to popular opinion, the degree of prevalence of possession of certain innovative skills (and especially – in foreign languages) is still rather low even in the youth environment in Ukraine. Thus, among the respondents, only 37% knew English well (33% of men and 41% of women). Knowledge of other foreign languages did not exceed 6%. The results of the analysis in relation to differences in the degree of prevalence of certain innovative skills possession by young people’s age groups are also quite natural and quite predictable. The largest percentage of computer skills and knowledge of foreign languages is in the age group of 15-19 years old;

driving – age group of 30-34 years; work with office equipment – age group of 20-24 years.

Thus, rather high labor orientations are typical of young people in Ukraine. During the transformation period in the country there was a significant diversification of domains and forms of young people employment, which increased the importance of vocational training for them as well as became an incentive to increase personal competitiveness at the labor market. It is for young people that the issue of the employment quality obtains a fundamental nature, since they have, in general, the highest demands-requests to the level of salary, the nature of professional employment, working conditions, etc. It should be recognized that part of Ukrainian youth is sometimes characterized by the presence of unreasonable ambitions, which, unfortunately, are not supported by either a sufficient educational-professional level or work experience. Young people often choose jobs not by interest, but only by salary amount, at the same time they want everything at once: a good position and a high salary that is why the demands of employers and young professionals often do not match. Moreover, due to the weakening of the labor value-ethical basis and the ineffectiveness of institutional foundations of the youth labor socialization under the modern conditions, the choice of the field of young people's activity not only often contradict to the obtained specialty, but sometimes goes beyond the legal norms.

As for the basic labor values of Ukrainian youth, one can conclude that work plays an essential role in young person's life. However, there are some differences within this group. So, for men, for young people with higher education and for young people with a low level of family income, work is more important. Each of these points can be explained through social roles, economic situation and social problems in the country. In all groups of young people, the value of good salary has the highest rates of importance, and active labor values remain on the last stages of the hierarchy. However, other aspects of work may differ. Young women in their work focus on the value of convenience, sociality and reliability of work more men. At the same time, men appreciate lack of tension, interest and initiative more. Active post-material labor values are more typical of young people with high education and high family income. Materialistic and convenience values are important for young people with an average level of education and income. For young people

with a low level of education and income, equality and usefulness in work are important values.

Comparing to other age groups, young people are characterized by a longer period of future working capacity, which may be required by organizations that implement a particular business strategy to different extents. Entrepreneurial strategy usually does not motivate the administration to form a permanent labor team; this strategy is often focused on the short existence of the organization itself. In this case, a long period of future working capacity of an employee is more likely to disturb his labor motivation. A young employee who seeks professional development and career growth will have to limit his aspirations to a certain level of remuneration. The strategy of changing the course that forces employees to temporarily lose their own interests in the interests of the organization may be unacceptable for young people due to a number of other specific features (high level of labor and social mobility, ideal thoughts about working life). This quality of young employees is of the greatest interest for continuously functioning organizations, with a clearly differentiated human resources policy for different categories and groups of employees, in which career planning has an important place. Accordingly, the young specialists themselves are interested in finding employment in such organizations.

2. Reformation of the Field of Normative-Legal Regulation of Youth Job Placement in the Context of Euro-integration Processes

Today, the main attention in the developed countries around the world is given to measures aimed at intensifying, on the one hand, the work of employment services, and on the other, the efforts of the unemployed to find a new job. The latter includes a significant liberalization of the concept of suitable work, in connection with the activity of seeking work with the amount of assistance, material incentives for the unemployed, recruited in the short term.

A social welfare system for unemployment, which involves the use of various mechanisms and means of providing benefits to the unemployed, has a special place among the measures aimed at employment provision and protection against unemployment in the developed countries.

It is important to provide young people with reliable and fair channels for job search as well. For example, graduates of British

universities find work through advertisements in newspapers and magazines – 41%, through recruitment agencies – 30%, through direct contact with an employer – 12% and only 9% – through friends and acquaintances[8]. At the same time in Australia, every fourth-year student knows where he or she will work in the future.

Considering the provisions of international legal acts in this field, the key element of national employment and job placement systems should be the provision of full employment of people that is provision of opportunity of job receipt for everyone who is ready to go to work. In addition, such work should be as productive as possible and chosen on the basis of a free choice. Measures aimed at full employment and protection against unemployment include: the creation and proper operation of free employment services; creation and proper functioning of the welfare system in case of unemployment; creation and proper functioning of the system of professional orientation, training and retraining; creation of new jobs; assistance in matters of employment for certain categories of people who are not competitive at the labor market (especially young employees).

An important aspect of reformation is the change in the educational area. One of important provisions of the Bologna Process is the orientation of higher education institutions to the final result: the knowledge of graduates should be implemented in practice for the benefit of the entire Europe. The problem of reforms also consists in the fact that it is necessary to make changes not only in laws on education, but also in a number of accompanying documents (for example, the Law of Ukraine "On Higher Education", etc.). The Ukrainian state has been trying to solve the employment problems of educational institution graduates for a long time. Over the past six years, the state order for the training of bachelors increased from 96.4 to 127.0 thousand (by 24%), and the scope of masters training – by 3.5 times.

The first and decisive criterion for the effectiveness of higher education and science activities in general and a specific higher educational institution in particular is the demand for specialists at the labor market. In our opinion, useful and fruitful may be the signing of the following: agreements between the Ministry of Education and Science of Ukraine and the Federation of Employers of Ukraine, etc.

[8] Пашинян И. А. Работа и трудоустройство в восприятии студентов / И. А. Пашинян // Социс – 2010. – № 1. – С. 130.

A number of experts and leaders of the educational sector made a suggestion on the ranking of higher education institutions and the introduction of elements of a particular tender for the placement of government orders, taking into account the efficiency of graduates' employment as the final result of cooperation with employers.

National education does not meet the requirements of personality formation, civil society, democratization, openness and transparency in full. The format of the educational process due to certain systemic difficulties is not oriented to the comprehensive development of personality, satisfaction of his or her needs, provision of demands of society and the labor market by competitive, competent and responsible specialists. The level of interaction between education and social partners does not contribute to solving this problem. At present there is no public responsibility for the quality of education of those who are involved in its provision, effective integration processes. Employers mostly do not participate in the formation of content of education and provision of high-quality vocational and practical training of youth. There is no constant monitoring of the education quality at all levels with the participation of students, parents, representatives of non-governmental organizations, rating assessment of the educational institution activities and their publishing.

The system of financing of education requires to be substantially improved, providing objective control in the format of "cost effectiveness – efficiency – results". At the same time, it should be taken into account that not only quantitative indicators of financing play a role in fulfilling the strategic tasks of Ukrainian society development. The structure of investments in education and skilled management in the field is not less important. Education is an extremely profitable branch of the economy, not so much with direct payments for tuition, but from the economic benefits that qualified professionals will bring with their work.

As for the number of students of higher educational institutions, Ukraine keeps up with the developed countries. The main problem is precisely in the quality of education and the provision of graduates with good work. Otherwise, the transition to European standards of education can become a stimulator of "brain drain" from Ukraine, lowering its intellectual potential. A proper remuneration for skilled labor should be an important step to prevent this.

The indicators that characterize a share of salary from GDP and a cost of production remain low, inappropriate to the world practice. In GDP, in recent years the share of salary was 45%, while in the countries of the European Union, on average, it was 65%. In the cost of production, the share of labor costs is around 14%, while in the most EU countries this number is 30-35%. One should concern about the discrepancy in salary of employees with the same level of qualification in public and private sectors. The salaries in the public sector are by 20% lower than in private one. It is differently in the developed countries. For example, in the United States, labor costs in the public sector per one man-hour are 1.5 times higher than in private[9].

Therefore, first of all, in the context of the European integration processes, Ukraine should identify the employment model that best suits the Ukrainian realities, and then adequately adapt it to the national conditions, by agreeing and completing all the gaps in national legislation.

3. The Ways of Improvement in Legal Regulation of Job Placement in Ukraine

The regulation of the youth employment process should be considered as a targeted influence on the behavior of the subjects of the labor market youth segment in order to ensure the maximum possible employment of young people, which will improve the quality of their life and create the basis for sustainable development of the country's economy. The regulation of the employment process for young people at the labor market should take place through both generally accepted and specific methods and based on information, institutional, scientific and regulatory framework. At the same time, the said regulation should be aimed at providing such guarantees in the field of employment and job placement for young citizens as guarantees aimed at: ensuring a free choice of work; protection of employees' labor rights during the establishment and termination of labor relations; reduction of unemployment and provision of the unemployed with funds for life; special guarantees for employees with reduced competitiveness at the

[9] Освітня політика в контексті євроінтеграції / [Електронний ресурс] – Режим доступу: http://old.niss.gov.ua/book/Zdioruk2/07.pdf

labor market (in particular, young people who enter the labor market for the first time)[10].

The state should become the most important intermediary and partner in terms of employment at the youth labor market under the present conditions, since under the conditions of economic crisis, aggravating the state of the labor market and its youth segment, the rest of employment subjects are not able alone to solve the problem of providing the youth with workplaces effectively. It is due to state regulation that the labor market becomes an integral part of a market economy, ensures the normal functioning of the economy, social stability of society and the reproduction of labor forces. At the same time, the state itself should take care of the development of social stability and youth protection, adjust the employment policy, review and update the legislative framework, timely finance state employment programs, develop a system of incentives and benefits for regions with low youth unemployment[11].

Lack of priority state policy in relation to the youth labor market has led to a number of negative phenomena in the process of its formation. Therefore, the crisis processes fully reflected the situation of young people as the least protected category. Unresolved problems of youth employment lead to the rise of unemployment and reduction of living standards, the spread of passive, unregulated and destructive behaviors, they encourage to external labor migration, causing psychological changes (loss of motivation to work, change in the structure of value orientations, and decline of prestigious legal employment).

Implementation of the state policy in the field of youth employment should be carried out systematically and consistently at all three stages of the youth's entry into the labor market: when choosing a profession and shaping professional plans; vocational training and professional adaptation[12]. In recent years, the employment of young people – graduates of higher educational establishments – requires special attention, as their share in the number of the unemployed is almost 20%.

In order to radically improve the normative legal regulation of employment and job placement, it is necessary to combine all norms of

[10] Безусий В. В. Правове регулювання працевлаштування в Україні: автореф. дис. на здобуття наук. ступеня канд. юр. наук; спец. 12.00.05 / В. В. Безусий. – Харків, 2007. – С. 5.

[11] Федорова А. А. Реалізація кадрового потенціалу молоді на ринку праці України / А. А. Федорова, Т. В. Карпенко // Бізнес Інформ. – 2011. – № 11. – С. 110.

[12] Губарєв С. В. Трудове право України, посібник для підготовки до іспитів // Дніпропетровськ: Середняк Т. К., 2015. – 125 с.

the normative legal acts in the field of employment and job placement after their qualitative processing into one codified act with the title of the Code of Laws On Employment of the Population of Ukraine or the Labor Code of Ukraine and to provide there a book named "Relations in the filed of Employment and Job Placement", which fully incorporates the revised normative legal acts on employment and job placement. Such document will help to identify the regularity and properties of the right to job placement as an independent legal phenomenon, improve the system of employment agencies, define their rights and responsibilities, and outline the structure of this right and its legal regulation.

In 2013 already the draft Labor Code of Ukraine was designed, which was never adopted, and then in general it was withdrawn[13]. As for the advantages of the draft Labor Code over the current Code, then the first one is its title, since the Labor Code is concise and meaningful title, and most important, it is similar to other titles of the codes such as civil, criminal, land, etc. The draft exceeds the current Code on the number of articles, which allows solving a large number of problems more efficiently, and regulating social relations better. The draft contains many chapters not included in the current code.

However, there are many shortcomings in the draft Labor Code. First of all, it is stated that the subject of labor regulation are collective labor disputes, and there is no corresponding chapter for their regulation. Although the draft has a book number sixth devoted to collective labor relations, but it does not contain norms for resolving disputes between the subjects of relations. Nevertheless, continuation of the work on the Labor Code is crucial.

In order to ensure the proper regulation of public relations in the state, the exercise and protection of the rights, freedoms and legitimate interests of citizens, it is important that the lawmaker, firstly, gives definitions of the terms which he applies in the normative legal acts, and secondly, these definitions should be clear, logical and unambiguous.

There is a necessity to improve the normative legal framework of employment and job placement in Ukraine in a certain way, in particular:

– To stipulate clause 3 of Article 1 of the Law of Ukraine "On Employment of the Population" in the following wording: "In Ukraine, the employed population includes citizens of Ukraine who:

[13] Проект Трудового кодексу України / [Електронний ресурс] – Режим доступу: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=46746

a) Work on the terms of a labor agreement (contract) at enterprises, institutions and organizations, irrespective of the forms of ownership, in international and foreign organizations in Ukraine and abroad, for natural persons;

b) Self-employed persons, who are entrepreneurs, persons engaged in creative activity, members of cooperatives, farmers and members of their families involved in production, lawyers, private notaries, auditors;

c) Serve in the alternative (non-military) service in the Armed Forces of Ukraine, the Security Service of Ukraine, the State Border Guard Service of Ukraine, internal troops, the Civil Defense Forces of Ukraine, the internal affairs bodies of Ukraine, other military formations established in accordance with the legislation of Ukraine, alternative (non-military) service;

d) Undergo professional training, retraining and advanced training in the classroom; study secondary schools and higher educational establishments on full time basis;

e) Engaged in the execution of works and provision of services on the basis of civil law contracts.

Citizens of other states and stateless persons residing or temporarily staying at the territory of Ukraine on legal grounds and carry out functions not related to the provision of the activities of embassies, missions, consulates and trade missions of foreign states also belong to the employed persons;

– To define clearly in the Law of Ukraine "On employment of the Population" who is recognized as partly unemployed, who can not be recognized as partly unemployed, as well as to develop a procedure for registration of partly unemployed;

– To include transport accessibility in the list of obligatory criteria of suitable work;

– To increase the quota of workplaces established by the Law of Ukraine "On employment of the population" up to 10%, as well as to establish a mandatory quota for enterprises and organizations for the employment of young specialists.

In view of the high percentage of unregistered unemployment in Ukraine, the State employment service needs to conduct an active advocacy work on the appropriateness and positive nature of being registered with the State employment service, but the most important

thing is that the State employment service should organize its work in such way that young people will really believe that this state body does everything possible to meet the needs of every person in the field of employment.

Today, in order to solve the problems of employment in the state, it is necessary to actively involve trade unions and other public organizations, as well as enterprises, institutions and organizations, together with state and local self-government bodies.

Among the economic factors, which should be necessary taken into account in the formation of a youth employment policy, structural changes play an important role. Predictable shifts in the structure of economy should be accompanied by processes of employment optimization and should be aimed at increasing its efficiency. Among many reasons for shortages of personnel is the low motivation of youth to work, poor working conditions and pay, lack of guaranteed social package, etc. Young people do not hurry up to occupy vacancies in enterprises with old equipment, poor working conditions. This is the reason for shortage of personnel of many enterprises due to the excess supply at the labor market[14].

The degree of the labor force competitiveness at the labor market depends primarily on the level of vocational education – the higher it is, the higher the level of economic activity and employment, and the lower the informal employment and unemployment. At the same time, unemployed persons with high educational status experience the greatest difficulties in finding a job[15].

According to the branch structure of youth employment, the current labor market is characterized by its uneven distribution. If on average one out of four employed people is a young person, then in health care, education and science – every third, in trade – more than 28%. In the financial and managerial field, the process of rejuvenation of personnel is traced. In industry and construction, the share of young employees, by contrast, is 2-3 times lower than the average. The desire of young people to work in transport, agriculture, housing and communal services and

[14] Натолока О.О. Основні проблеми працевлаштування молоді в Україні / [Електронний ресурс] – Режим доступу: http://www.kbuapa.kharkov.ua/e-book/conf/2013-2/doc/2/22.pdf

[15] Натолока О.О. Основні проблеми працевлаштування молоді в Україні / [Електронний ресурс] – Режим доступу: http://www.kbuapa.kharkov.ua/e-book/conf/2013-2/doc/2/22.pdf

consumer services is the lowest[16]. The desire of young people to work in transport, agriculture, housing and communal services and consumer services is the lowest[17].

The success of job placement depends on many factors: economic (demand for work forces, salary, opportunities to be employed in accordance with a previously acquired profession or after retraining); socio-demographic (age, gender, health status, marital status, the presence of children and dependents); demographic and economic (level of education, professional qualification, availability of work experience, financial capacity and availability of additional sources of earnings, etc.). However, even if these positive factors are present, the success of employment is not guaranteed if they are not based on socio-psychological factors determining the attitude of a person towards his or her own unemployment and orientation of his or her efforts to overcome the problem situation, the willingness to mobilize own efforts to succeed[18].

Taking into account that the solution to the job placement problem depends primarily on the person himself or herself: his or her attitude to the situation, intentions and the manifestation of personal activity – special attention is paid to the measures aimed at forming the socio-professional and psychological characteristics in the unemployed person that contribute to the successful adaptation of a person to the changing external circumstances, increasing his or her own competitiveness at the labor market and mobilizing own potential in order to successfully overcome the problem[19].

It is necessary to solve the problem of employment increasing and to approach its solution comprehensively by way of[20]:

1) Strengthening of state regulation of the educational services market for the training of young specialists differentiating it by branches of knowledge; forecasting of demand for youth labor by occupations and

[16] Натолока О.О. Основні проблеми працевлаштування молоді в Україні / [Електронний ресурс] – Режим доступу: http://www.kbuapa.kharkov.ua/e-book/conf/2013-2/doc/2/22.pdf
[17] Натолока О.О. Основні проблеми працевлаштування молоді в Україні / [Електронний ресурс] – Режим доступу: http://www.kbuapa.kharkov.ua/e-book/conf/2013-2/doc/2/22.pdf
[18] Авдеєв Л. Г. Роль людського фактора в успішному працевлаштуванні / [Електронний ресурс] – Режим доступу: http://ipk-dszu.kiev.ua/journal/2011-4.pdf
[19] Авдеєв Л. Г. Роль людського фактора в успішному працевлаштуванні / [Електронний ресурс] – Режим доступу: http://ipk-dszu.kiev.ua/journal/2011-4.pdf
[20] Натолока О.О. Основні проблеми працевлаштування молоді в Україні / [Електронний ресурс] – Режим доступу: http://www.kbuapa.kharkov.ua/e-book/conf/2013-2/doc/2/22.pdf

planning of the qualification and educational structure of its proposal should be included in its competence;

2) Promoting the limited youth employment in the informal sector of the economy, as well as preventing discrimination of young people at the labor market and increase in unemployment; local self-government bodies should actively monitor the situation of young people at the regional labor market;

3) Granting greater powers to local governments in solving such problems as: development of labor market infrastructure; encouraging employers to create new jobs; stimulation of youth entrepreneurship; ensuring the active interaction of scientific centers with regional state administrations in developing strategies for the development of youth segments of regional labor markets;

4) Improvement of educational activity of modern educational institutions in order to ensure the quality of providing educational services.

Evaluating the overall situation at the labor market requires a qualitative, rather than purely quantitative approach. The task is not only or not so much in providing graduates with the latest information on available jobs and applications from organizations, but also in providing them with the opportunity to directly establish relations with these organizations, to learn about the requirements for specialists, the interests of "customers", as well as the situation at the labor market in general, which will help in making informed choices. And, certainly, the issue of distribution should be addressed in advance, in the period of work practice, although the student takes the final decision in the last year of studying.

In recent years, the forms of student self-organization have begun to develop in the field of work: firms and organizations are being created, engaged in the employment of students and graduates of higher educational institutions, gathering and disseminating information among them about possible places and proposed working conditions, organizing "Career Days" and other forms of contacts between students and employers[21].

One way of solving the youth job placement problem is to use such form of facilitation of exercise of the right to work for students who are

[21] Герчиков В.И. Феномен работающего студента ВУЗа / В. И. Герчиков // Социологические исследования. – 2009. – С. 91.

studying at the expense of enterprises, and for employers in their choice of highly skilled personnel as the target contractual training of specialists with higher and secondary specialized education. In order to improve the legal regulation of target contractual training of specialists, these issues should be regulated in the employment law, where it is necessary to clearly determine: the content of contracts to be concluded; the order of their conclusion; the question of the responsibility of employers and educational institutions for violating contract terms, in particular, for refuse in taking graduates to work, to determine the grounds and procedure for reimbursement by a student who does not comply with the terms of the contract in favor of the employer or the educational institution of the expenses incurred in connection with student's training, to establish the possibility of concluding fixed-term labor contracts with persons trained within the target contract preparation.

For young people adaptation who are looking for work for the first time to the modern labor market conditions, it is necessary to take special measures aimed at schoolchildren and students, namely: formation of motivation of youth for employment; informing young people about the state of the labor market, the conditions for its functioning, and the most demanded jobs and specialties; familiarization with the legislation on labor and employment (in schools, lyceums, universities, at courses, etc.); vocational guidance and professional counseling work in schools and vocational schools; illustration of the variety of ways of possible person's self-realization; formation of active job search and diligence skills in young people; assisting in planning a career, promoting a conscious choice of young people in the form of employment, type of profession; the organization of temporary workplaces for youth and adolescents with the purpose of acquiring labor skills, work experience in the profession.

According to experts[22] an effective measure to promote youth job placement is to establish control over the employment of young graduates whose need have previously been declared; the initiation and development of integrated programs for the organization of work practice in educational institutions and the possibility of fixing such practice in the work book as part of work experience. The employment problem for young people who are particularly in need of social protection (disabled people, parents with many children, etc.) should be provided by methods

[22] Балакірєва О. М. Проблеми працевлаштування та міграційні орієнтації молоді / О. М. Балакірєва, О. В. Валькована // Економічний простір. – 2009. – № 2. – С. 89.

of a targeted, highly specialized approach designed to address the individual characteristics of this category of young people, including the quotation of workplaces. It is necessary to support the opinion of many experts who believe that the process of developing a flexible labor market and effective youth employment should be supported by government measures to reduce standard forms of employment and promote new flexible forms of employment of young employees[23].

In the modern conditions a distance employment can be one of these forms. The distance employment is defined as a non-standard form of employment, involving flexible social and labor relations between the employee and the employer directly in the virtual environment using information and communication technologies. The non-standard nature of this employment form is conditioned by the unsteadiness of the workplace, irregular working hours, instability and flexibility of social and labor relations. The virtual environment of distance employment involves widespread use of information and communication technologies, work through information networks, work at home and in special centers spatially remote from the company's main office[24].

The use of distance employment is possible in these forms. Firstly, it can be the main form of employment in the organization, primarily for creative professions: artists, programmers, designers, copywriters, webmasters, photographers, journalists, editors, proofreaders, translators, etc. Secondly, it is a possibility of remote work for individual employees of the company[25]. At the same time, despite the outlined advantages of distance employment, its use may be subject to certain limitations. Firstly, work at home is characterized by a decrease in the number of visual and oral communication, and for a young person with limited social contacts, this form of employment may be ineffective. Secondly, the possibility of applying a distant form of employment depends on scrupulosity and experience of each individual employee to a certain extent. As a result, due to low self-organization, the increase in the working time to perform the necessary task at the expense of free time is possible. Thirdly, experts point out to almost complete shadowing of distance work in Ukraine,

[23] Пірон І. В. Сучасна державна політика зайнятості населення в Україні / І. В. Пірон // Форум права. – 2010. – № 1. – С. 303.

[24] Красномовець В. А. Характеристика трудових відносин в умовах дистанційної зайнятості / В. А. Красномовець // Соціально-трудові відносини: теорія та практика. – 2011. – № 2. – С. 86–91.

[25] Красномовець В. А. Характеристика трудових відносин в умовах дистанційної зайнятості / В. А. Красномовець // Соціально-трудові відносини: теорія та практика. – 2011. – № 2. – С. 88.

which has definitely a negative impact on the labor market and the economy of the country.

One of the priority ways for promoting young people employment should be the creation of basis for youth development entrepreneurship. V. Yaroshenko believes that the choice of a person of the employment area (public or private sector) and its form largely depends on age, gender, and profession.

In his opinion, it is the youth that the most inclined to entrepreneurial activity. For some, this is due to the opportunity to increase their incomes, for others, including young specialists, it is the opportunity to show their individuality, to satisfy the need for creativity[26]. To solve the problem of developing alternative forms of employment such as private entrepreneurship, it is necessary to distinguish the following measures: creation of a developed infrastructure for supporting entrepreneurial initiative by providing cash subsidies to citizens in the organization of their own business; determination of the priority areas of youth employment; coordination of work for all state bodies in this area, taking into account the necessity to promote self-employment, first of all, off those citizens whose professional skills and abilities remain non-demanded at the labor market; development of regional programs for promoting youth micro-business, in particular its financial and credit regulation.

Youth employment is also impossible without an effective state employment policy, which should be aimed at ensuring the flexibility of the youth labor market, increasing the mobility of employees, regulating the hidden unemployment segment, legalizing informal and illegal employment, and stimulating youth work activity and labor demand. However, ensuring employment will depend on the growth of production output and investment aimed at creating new jobs. Therefore, an important area of the state policy in the employment field is the provision of interconnection of measures in economic development, fiscal and tax policies.

It should also be noted that effective regulation of the young people employment is impossible without reliable forecasts regarding the prospective change in demand and supply on the youth labor market, as well as improvement of information provision of this process. National

[26] Ярошенко В. Проблема конкурентоспроможності національного ринку праці України / В. Ярошенко // Україна: аспекти праці. – 2008. – № 6. – С. 15.

monitoring of youth employment needs improvement because it does not give an objective evaluation of the youth labor market in many aspects. Thus, the surveys on the population economic activity do not reflect the information about young people having worked without labor contracts, under the difficult or harmful conditions, part-time or with an extended working day, performed jobs below their qualification[27]. For the completeness of the youth labor market characteristics, the proportion of young people who are not working and not studying should be considered, too. This indicator is calculated in the United Kingdom, China, Japan and Korea, and covers economically inactive young people who are not working and studying after receiving compulsory general secondary education due to illness, disability, the need for family responsibilities or unemployment.

In addition, there is no statistics on the average length of employment of educational institution graduates in the context of knowledge branches in Ukraine. This indicator reflects the average duration of employment in the first job after the completion of vocational education. At the same time, it is an indicator of the demand for knowledge by the market, that is, an informative factor in the formation of government orders for specialists and masters by knowledge branches. Monitoring the duration of job placement is very important, as the increase in the duration of forced unemployment leads to a loss of knowledge and skills, disbelief, the spread of labor apathy, etc. Moreover, the scientists proved that for graduates who early in their working life face a long period of unemployment it is more likely to experience deterioration in the quality of working life through shifting periods of low-paid employment. According to experts, effective basis for effective regulation of youth employment should be immediate provision of government authorities with accurate and complete information on the amount of current and prospective additional needs of enterprises for employees by professional qualification structure, on the one hand and professional qualification structure of labor supply, on the other hand. The shortage of relevant information concerning the state of the labor market segments makes its effective regulation impossible[28].

[27] Губарєв С. В. Робочий час: правовий погляд // Проблеми правової реформи в трудовому законодавстві Україні: матеріали круглого столу. – К., 2015 – С. 7–12.

[28] Корецька С. О. Удосконалення системи інформаційного забезпечення кількісно-якісного оцінювання трудових ресурсів / С. О. Корецька // Держава та регіони. – 2014. – № 2.– С. 79.

Therefore, in order to solve problems in the youth employment field, it is necessary to eliminate not their consequences, but the causes of their occurrence and existence. The legislative and normative acts regulating the employment of young people of different categories do not adequately take into account the socio-economic opportunities of Ukraine, its socio-economic development. To solve these problems it is necessary: to create specific student enterprises for the job placement of minors in time-free from education; promote the creation of youth small enterprises and cooperatives; to create the departments at higher educational institutions or at employment services for the promotion of youth job placement. At the same time, improvement of legislative and normative framework is one of the main comprehensive measures for the implementation of state youth policy, namely: improvement of legal preconditions for effective work in the main areas of youth policy; definition of the mechanism of observance of the legislative norms at the local level; definition and consolidation of functions and powers, rights and obligations of subjects of legal relations in the field of youth policy. So, it can be stated that the legislation does not sufficiently define the responsibility of employers for refusing to employ young citizens; there are no normative documents on the economic stimulation of employers who create jobs for the relevant categories of youth above the established quota. It is necessary to have a perfect mechanism for regulating the employment of different categories of youth, which would take into account the financial, social and economic opportunities of the state, region and enterprises.

It is essential to create conditions facilitating the attraction and consolidation of young professionals in production, namely: decent salary and its timely payment, the availability of social guarantees to the employee, the possibility of job promotion, the solution of housing issues, the initiative of students of secondary and students of initial vocational education during the work practice at enterprises. It is necessary to recognize the field of youth employment as a priority component of the state social policy, since young people are the largest strategic resource of the country.

At the present stage of development, the main areas of the state employment policy regarding the employment of young people should be expansion of the scope of labor application, the formation of a favorable business environment, and increase in social protection of citizens. The

state employment policy should be focused on creating new productive jobs to the full extent. It is the job creation policy in Ukraine that is one of the least effective. Even under the conditions of financial crisis, the policy of creating new jobs could be realized through the use of indirect economic instruments such as tax relief, the development of small and medium-sized businesses, attraction of foreign investment, and financial incentives for companies in case of employment of young unemployed people by them.

CONCLUSIONS

Summarizing all the abovementioned we can say there should be the following priority areas of regulation of youth job placement processes at the labor market such as the increase in youth competitiveness at the labor market; development of employment competences; expansion of flexible forms of employment; stimulation of self-employment; balance of labor markets and educational services, improvement of information provision of job placement processes, development of collective-contractual methods of youth employment regulation. The practical implementation of the developed conceptual framework for regulating the employment of young people at the labor market will increase the employment rate of young people and the quality of life of such socio-demographic group representatives, as well as facilitate the creation of the basis for sustainable development of economy in the country.

SUMMARY

The author has formulated and recommended the main ways of improving the legal regulation of youth job placement in Ukraine for practical application based on their value orientations. The developed methodology will give the opportunity to use the experience gained for further improvement of this topic.

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CORRUPTION AS A THREAT FOR CRITICAL INFRASTRUCTURE OBJECTS

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The guarantee of safety and resistance of national critical infrastructure is a priority direction of security policy in Ukraine, since critical infrastructure provides vital options for people, society and state without which it is impossible to exist safely and provide the proper level of national security.

Critical information infrastructure is considered as a main component in the critical infrastructure of many states reflecting in relevant approaches to such concept determination. The main reasons for the criticality of the infrastructure information component arise from the rapid spread of information technology in all domains of our life and, accordingly, the growth of vulnerabilities and potential threats of different nature. It is obvious that under such conditions, the security of cyber technologies in critical infrastructures (public management infrastructure, financial, banking, transport, energy, resource, communal and product supply) of modern society becomes one of the main issues.

The European Union defines critical infrastructure as a system that is essential for maintaining vital social functions. Damage to the critical infrastructure, its destruction or disturbance as a result of natural disasters, terrorism, criminal activity or abusive behavior may have a significant negative effect on the EU security and the well-being of citizens (European Council Directive 2008/114 / EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection).

At the present stage, the development of a critical infrastructure protection system at the national level is ensured by gradual steps taken by the Government of our country to develop an optimal state system for protecting critical infrastructure of Ukraine. Thus, the Government has adopted the Concept for the creation of a state system of protection of critical infrastructure of our state (hereinafter – the Concept), which was developed by the Ministry of Economic Development and Trade together

with the National Institute of Strategic Studies and the Security Service of Ukraine. We should recall that the Concept was approved on December 6, 2017 by the Order № 1009-r of the Cabinet of Ministers of Ukraine.

The concept is the basis for the creation of a state system of protection of critical infrastructure objects, the violation of whose work may be harmful to the national interests of Ukraine. It defines all key concepts and proposes a mechanism for interaction between government bodies. The Government believes that the creation of such protection system will ensure the resilience to threats of all kinds. Thus, the Concept establishes a qualitatively new level of public management in this area and provides modern approaches to managing security risks, optimized use of available resources, flexibility and speed of response to incidents and crises.

The critical infrastructure objects include enterprises and institutions that are strategically important for the functioning of economy and security of the state, society and population, disruption or destruction of which could have an impact on national security and defense, natural environment, lead to significant material and financial losses, human victims. The term of "critical infrastructure" is used in such meaning as objects, systems and resources, physical or virtual, providing functions and services whose violation will lead to the most serious negative consequences for the life of population, society, socio-economic development, state defense and provision of national security.

The next step in creating a critical infrastructure protection system is the development and consideration of the draft law "On critical infrastructure and its protection", to be defined by the state bodies responsible for ensuring the implementation of measures on priority sectors of critical infrastructure, including the telecommunication and communication sector.

It is also essential to strengthen international cooperation in the field of critical infrastructure protection, which, together with the strengthening of the ability of national governments to provide protection for critical infrastructure, draws attention to the resolution of the UN Security Council in relation to critical infrastructure protection from terrorist attacks № 2341 on February 13, 2017.

It is believed that under the present conditions, the provision of security of the information field is on the first place in relation to the

development of a high quality system of critical information infrastructure protection for our state, namely, cyber-security. In this regard, on October 5, 2017, the Verkhovna Rada of Ukraine adopted the Law "On the Basic Principles of Cyber-security Provision of Ukraine", which will come into force in six months after its publication. The said Law is an innovative document, since it establishes many important definitions at the legislative level: cyber-threat, cyber-espionage, cyber-crime, cyber-attack, as well as defines the necessity for a unified (universal) system of cyber-threats indicators, taking into account international standards on cyber-security and cyber-protection.

The law provides that enterprises and institutions that operate and provide services in the fields of chemical industry, energy, transport, ICT, banking and financial sectors, electronic communications; provide services in the field of life support of population; are utilities, emergency and rescue services; are included in the list of enterprises of strategic importance for the economy can be classified as the critical infrastructure objects.

This legal act opens new opportunities for settlement of situation in the information field. Despite the long discussions and the fears of certain experts regarding the possibility of excessive state control in the cyber-field, this Law will enable moving the development of the national information space to a qualitatively new level in the future[1].

The task of protecting critical infrastructure moves the focus of attention to prevention of crisis situations in relation to its operation. In this regard, it should be emphasized that it is absolutely reasonable to add the anti-corruption system to existing systems of countermeasures.

It is believed that the protection of critical information infrastructure is not just an update of the terms in the current legislation; it is the introduction of a new approach. Its main components are the creation of a security partnership between all stakeholders, the organization of a comprehensive evaluation of threats to such infrastructure and their impact on the level of national security in its separate components, in particular the establishment of a mechanism for monitoring and preventing corruption offences.

[1] Рудь І. Закон про кібербезпеку: основні положення, оцінки експертів та розвиток вітчизняного інформаційного простору [Електронний ресурс] / І. Рудь // Україна: події, факти, коментарі. – 2017. – № 19. – С. 42–48. – Режим доступу: http://nbuviap.gov.ua/images/ukraine/2017/ukr19.pdf.

1. Corruption as a Problem of a Modern Society

The fight against corruption is a priority of Ukrainian society, and the spread of corruption to this day is one of the main real and potential threats to the national security of Ukraine, and its elimination is a priority task of the state authorities.

Corruption in Ukraine has an endemic nature, which is confirmed, including by the results of the study of Transparency International organization launched in 1998 in relation to Ukraine. According to the data of a non-governmental organization, over the last ten years Ukraine took the following place concerning the level of corruption: in 2007 – 118th place from 180 countries; in 2008 – 134th place from 180 countries; in 2009 -158th place from 190 countries of the world; in 2010 – 134th place among 178 countries covered by the index; in 2011 -152 from 183 countries covered by research; in 2012 – 144th place from 176 countries; in 2013 – 144th place from 177 states; in 2014 – 142 place from 175 positions; in 2015 – 130th place out of 168 positions; in 2016 – 131st out of 176 countries and the following years are no exception.

The current study emphasizes that corruption remains one of the negative social phenomena disturbing Ukrainian society. In particular, if one turn to the population survey carried out by the Democratic Initiatives Foundation, how successful is the fight against corruption in Ukraine, more than 80% of respondents believe that it is not successful and only 1% of the population sees positive changes[2].

Certainly, one can not say that there are no positive changes in the state. In particular, only during 2017 the Verkhovna Rada adopted about 50 bills that allow the introduction or continuation of key reforms of: the civil service, the judicial system, pension, educational, medical, etc. In particular, the reform of the judicial system has continued, namely: in January 2018 the new Supreme Court will work in full, there will be changes in appellate and local courts, which will also be certified and renewed in relation to judicial staff. The establishment of the Supreme Court on Intellectual Property and the Anticorruption Court is in the plans as well. All planned reforms should affect the level of corruption, and, accordingly, the easiness of doing business in Ukraine and its investment attractiveness.

[2] Фонд «Демократичні ініціативи» [Електронний ресурс] – Режим доступу : http://dif.org.ua/category/opinion-polls.

That is why it can be stated that corruption is the stone that lies on the path the development of Ukraine. If we do not win, all the reforms will be useless, and Ukraine will not realize the potential that it has.

At the present stage, the country faces a range of specific problems, including the concentration of political and economic power in a small group of people who may hinder the implementation of effective anti-corruption measures. This opinion is proved by the survey conducted by the National Agency for the Prevention of Corruption (hereinafter – NAPC), "Corruption in Ukraine 2017". Thus, Ukrainians consider state institutions, courts, the Verkhovna Rada, the public prosecution office and the customs as having "sticky fingers" to the most. However, the corruption is known only to 59.4% of the population and 61.7% of entrepreneurs. At that, only 28.8% of ordinary Ukrainians and 42% of business representatives were able to name the anti-corruption bodies, and no more than 22-23% of all respondents were informed about their work results.

There are some interesting ideas from ordinary Ukrainians about corruption temptations. For example, if the patient paid 5 thousand UAH upon the doctor's request after surgery, 93.1% called it a bribe, but if the patient did the same, but on his free will – the act was disapproved only by 60.1%. The situation, where a pensioner gives a postman 20 UAH, when a postman brings her a pension, only 33.5% of Ukrainians consider corruption. However, if the schoolteacher insists on additional paid lessons for the child, 58% see it as unlawful benefit. Among the business representatives, 84.2% of respondents believe that if the director of the company hires an accountant on the condition of "gratitude" – this is also corruption.

The study also showed that ordinary Ukrainians are more tolerant to corruption than business representatives. Only 14.7% of people want to reveal the corruptor (among businessmen, such number is 24.7%). Another 26% are ready to pay the necessary bribe (among entrepreneurs such number is 20.9%). Instead, business representatives are more neutral about corruption (53.8%) and use ties to solve problems (22.4%). However, only 19% of the respondents wanted to report it when the real request for unlawful benefit took place. Of these, 7% reported and do not regret it, 3% – feel sorry, 84% – kept silent. For reasons of refusal, 45% answered that they questioned the effectiveness of punishment, 32% – do

not trust anti-corruption bodies, 19% – justify corruption. At the same time, 52% consider the accused to be respectable people, 11.9% – careerists, 3.3% – strange, 9.6% – jealous, 7.7% – greedy, 7.4% – traitors[3].

Regarding positive trends, the study showed that both businessmen and ordinary Ukrainians believe that the highest results in the fight against corruption are demonstrated by mass media representatives, public organizations, anti-corruption authorities, namely: the National Anti-Corruption Bureau of Ukraine (hereinafter – NABU), the Specialized anticorruption prosecution office (hereinafter – SAP), NAPC, National Police, etc.

In the field of counteracting to corruption, significant human, material and financial resources are involved. In particular, according to UNIAN, on September 16, 2016, the European Commissioner for Enlargement and European Neighborhood Policy Johannes Hahn said that the European Union allocated more than 16 million euros in support of Ukrainian state anti-corruption bodies[4].

In the autumn of 2017, World Bank President Jim Yong Kim pointed out that the newly formed Ukrainian anti-corruption authorities already have achievements in revealing and fighting corruption, and these bodies need support, including financial support, for the further implementation of anti-corruption reforms in Ukraine. In particular, the press service of NABU reminded that during his last visit to Ukraine in November 2017, Jim Yong Kim noted that the support would be aimed at helping to create an Anti-corruption court, and would include consultations, training and potential strengthening. Thus, material assistance will come in the form of IT equipment and software. The total budget of the program is 16.34 million euros, where the European Union contribution makes 15 million euros, and the rest amount is from Denmark[5].

One of the most important steps in fulfillment of international commitments in Ukraine in the field of counteraction against corruption was the adoption of some normative legal acts on anticorruption, including the Law of Ukraine “On the Principles of State Anti-Corruption

[3] Фонд «Демократичні ініціативи» [Електронний ресурс] – Режим доступу : http://dif.org.ua/category/opinion-polls.

[4] ЄС виділяє 16 мільйонів євро на боротьбу з корупцією в Україні / Економічна правда // [Електронний ресурс] – Режим доступу : http://www.epravda.com. ua/news/2016/09/16/605743/.

[5] ЄС і Данія виділили €16 млн на боротьбу з корупцією в Україні. – Режим доступу : http://ukr.lb.ua/news/2016/09/15/345242_ies_i_ daniya_vidilili_16_mln_borotbu.html.

Policy in Ukraine for 2014-2017" by the Verkhovna Rada of Ukraine on October 14, 2014»[6], by which Anticorruption Strategy for 2014-2017 was approved. In fact, this Law and Strategy have changed the National Anti-Corruption Strategy for 2011-2015, approved by the Decree of the President of Ukraine on October 21, 2011[7].

The Law of Ukraine "On the Principles of State Anti-Corruption Policy (Anticorruption Strategy 2014-2017)" provided for the transfer of significant material and personnel resources to fight with corruption. In recent years, the necessary expenses from the state budget of Ukraine provided for the creation of a new system of state specialized anti-corruption bodies. At present, NAPC, NABU, SAP, the National Agency of Ukraine for the Detection, Investigation and Management of Assets Received from Corruption and Other Crimes (hereinafter – NARMA), the National Bureau of Investigations (hereinafter referred to as – NBI) are considered as key elements to overcome corruption by the public and international partners of Ukraine. At the same time, it is necessary to strengthen people's trust to them and their ability to counteract to corruption.

On September 8, 2017 Nataliia Korchak, chairman of NAPC, presented the concept of a new Anticorruption Strategy for 2018-2020 (hereinafter referred to as Strategy). Among the priority objectives of the project are: corruption level assessment and analysis of the results of the previous Anticorruption Strategy for 2014-2017, completion of the formation of anti-corruption bodies, improvement of legislative initiative, prevention of corruption at all levels of power and in the private sector, etc.

In particular, the draft Strategy emphasizes that the elimination of corruption in the country in general and the struggle against its manifestations in certain fields of the economy and public management depend on the introduction of strong rules of good faith, observance of the rules of fair and transparent elections, and the level of democracy of a political system. Thus, the published results of the electronic declaration of incomes have shown not rare cases of possession of property and funds that do not correspond to their incomes and violate standards of good faith

[6] Засади державної антикорупційної політики в Україні (Антикорупційна стратегія) на 2014–2017 роки, затв. Законом України від 14 жовтня 2014 року № 1699-VII [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/ laws/show/1699-18.

[7] Національна антикорупційна стратегія на 2011–2015 роки, затв. Указом Президента України від 21 жовтня 2011 року № 1001/2011 [Електронний ресурс]. – Режим доступу: http://zakon2.rada.gov.ua/ laws/show/1001/2011.

by people's deputies of Ukraine. At the same time, parliamentary immunity complicates the mechanism of bringing such persons to criminal liability[8].

In view of the abovementioned, it is worth emphasizing that today Ukraine has not carried out a review of legislation in order to ensure transparent, effective procedures for deprivation of deputies' immunity, provided that there are proper legal grounds for this, as well as the issue of possible limiting the parliamentary immunity to a certain extent is not considered, in particular, by introducing a functional immunity that would allow the deputy of Ukraine to be detained without the consent of the Verkhovna Rada of Ukraine on the grounds and in the manner determined by the criminal procedural legislation of Ukraine, and would remove restrictions on investigative actions against deputies. The issue of preventing deputies from leaving the country has not been resolved, regarding which the Verkhovna Rada is considering the issue about giving consent on their prosecution.

At the same time, the level of corruption in executive bodies is decreasing rather slowly. One of the reasons for this situation is incompleteness and fragmentation of administrative reform of central executive bodies (division of powers, deregulation of entrepreneurial activity, simplification of procedures for the provision of administrative services, etc.). The introduction of anti-corruption programs confirmed the absence of personnel and institutional mechanisms for their implementation, as well as the lack of expert capacity for assessing and identifying corruption risks in the activities of state authorities. Therefore, it is extremely important to increase the effectiveness of the implementation of anti-corruption programs. An important task in implementing the reform of the civil service remains the reduction of corruption-related risks and increase of level of good faith in the civil servants' behavior.

As the analysis of statistical data of the Ministry of Internal Affairs of Ukraine has shown, at the present stage there is a gradual decrease in the number of registered corruption offences and an increase in the indicators of bringing officials to responsibility (including criminal one). Thus, during 9 months of 2017, 4481 reports on corruption offences were sent to

[8] Антикорупційна стратегія на 2018–2020 роки: проект [Електронний ресурс]. – Режим доступу: http://nazk.gov.ua/uk/

the court (in the corresponding reporting period of 2016 – 5022), 2295 of them are criminal offences, 2265 cases were sent to court with the indictment (in the corresponding period of 2016 – 1576). As a result of their consideration, 2,400 civil servants were prosecuted (in the corresponding period of 2016 – 1700).

Based on the given above, one can confidently state that corruption in Ukraine primarily creates a threat to financial stability, because it does not counteract to the formal economy, but exists in it, and acts as a natural and logical consequence of the legal status of economic and management entities. It appears that the officials of certain state structures not only serve the economy, they take part in it, having "their share" in the economy. It is the functioning of the state-political machine that is economically dependent, so it is subordinated, in the essence, to the economic consciousness. Thus, despite the general decrease in the number of registered corruption offences and the increase in the indicators of bringing persons to liability, the total number of corrupt acts and the resulting material losses remains rather high, as well as the level of perception of corruption phenomena by the population.

The counteraction to corruption is based on three components: 1) the presence of political will of the state management; 2) the formation of a negative attitude towards corruption among population; 3) elimination/ maximum reduction of conditions and incentives for corruption; 4) effective detection of corruption offences, inevitability of punishment for their commission. All of the above elements should be reflected in the state policy of Ukraine in the field of corruption prevention. Therefore, the problem of analyzing and improving the direction of the state policy of Ukraine in the field of corruption prevention remains relevant.

Today, it is rather difficult to determine the real extent of corruption and the effectiveness of measures aimed at fighting against it, and therefore, it is reasonable to carry out an assessment not according to individual criteria, but on a combination of factors, in particular, based on: 1) statistical data (they are important for state bodies, including law enforcement), 2) the rating level defined by international organizations (for example, Transparency International); 3) the population's attitude to this process (is the most optimal criterion for the efficiency of the authorities' work in this field).

2. Corruption Offences and Ways of Counteraction

In the modern period, despite the active discourse in the circles of theorists and practitioners, there are many problematic issues, first of all, with the definition of the concept of corruption offence and liability for them. In this regard, it is reasonable to determine what exactly should be understood under the corruption-related crimes in the understanding of Ukrainian lawmaker and in the light of international experience on the given issue.

Certain provisions of the UN Convention against Transnational Organized Crime are devoted to the definition of corruption crimes. In particular, Article 8 "Criminalization of corruption" of the United Nations Convention against Transnational Organized Crime of November 15, 2000 (ratified by Ukraine with limitations and statements on February 4, 2004) indicates the need to recognize such acts as criminal offences when committed intentionally: a) the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself/herself or another person or entity, in order that the official act or refrain from acting in the exercise of their official duties; b) the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official himself/herself or another person or entity, in order that the official act or refrain from acting in the exercise of their official duties. This Convention also provides that each State Party shall consider the possibility of criminalizing: 1) the cases referred to above if any foreign public official or international civil servant is involved; 2) participation as an accomplice in the commission of any crime recognized in accordance with Article 8 of this Convention; 3) any other forms of corruption.

The Criminal Law Convention on Corruption (ETS 173), adopted on 27 January, 1999 in Strasbourg and ratified by Ukraine on October 18, 2006 recalls about corruption-related crimes, or rather, "crimes related to corruption", in the light of the official translation into Ukrainian. The Civil Convention on corruption (ETS 174), adopted on November 4, 1999 in Strasbourg and ratified by Ukraine on March 16, 2005 refers to "corruption actions". The UN Convention against Corruption on October 31, 2003 (ratified by Ukraine with statements on October 18, 2006) also refers to "crimes recognized (specified) by this Convention". This convention is based on a number of other important international legal instruments on the prevention and counteraction of corruption (in

particular, the Inter-American Convention against Corruption, adopted by the Organization of American States on March 29, 1996; The Convention against corruption affecting public officials of the European Communities or public officials of the Member States of the European Union, adopted by the Council of the European Union on May 26, 1997; Convention against Bribery of Foreign Public Officials in international business transactions, adopted by the Organization for Economic Co-operation and Development on November 21, 1997; Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on January 27, 1999; Civil Convention against corruption, adopted by the Committee of Ministers of the Council of Europe on November 4, 1999; The African Union Convention on the Prevention and Fighting of Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003; UN Convention against Transnational Organized Crime of November 15, 2000).

A typical aspect of Ukrainian criminal law is the lack of a systematic approach to understanding of corruption-related crimes and responsibility for them. In particular, Article 1 "Definition of Terms" of the Law of Ukraine "On Prevention of Corruption" on October 14, 2014 states that corruption is the use by a person specified in Part 1 of Article 3 of this Law, the official powers granted to him/her or the related opportunities for the purpose of obtaining an unlawful benefit or the acceptance of such benefit or the acceptance of promise/offer of such benefit for himself/herself or other persons or, accordingly, the promise/offer or provision of unlawful benefit to the person specified in Part 1 Article 3 of this Law, or upon his/her request to other natural or legal persons, in order to incline the person to the unlawful use of the official powers granted to him/her or the related opportunities. The specified Law distinguishes between two types of corruption offences: corruption offences and corruption-related offences.

The Criminal Code of Ukraine does not contain a fixed definition and a separate section in which all the existing compositions of corruption crimes are grouped. Existing practice is completely justified in view of the tradition of forming the structure of the Criminal Code of Ukraine and the spread of corruption manifestations in almost all fields of society daily life. The concept of a corruption crime of the Criminal Code of Ukraine reveals its content through listing all the acts that may be attributed to corruption in Article 45 of the Criminal Code of Ukraine. Thus, the note to this article under corruption crimes means crimes envisaged by

Articles 191, 262, 308, 312, 313, 320, 357, 410 of the Criminal Code of Ukraine, in the case of their commission by abuse of official powers, as well as crimes provided by Articles 210, 354 , 364, 364-1, 365-2, 368-369-2 of the Criminal Code of Ukraine.

Thus, the range of corruption crimes is divided into 2 groups by a lawmaker. The first group includes: appropriation, embezzlement or acquisition of property by abuse of official powers (Article 191 of the Criminal Code of Ukraine); theft, appropriation, extortion of firearms, ammunition, explosives or radioactive materials or their acquisition by fraud or abuse of official powers (Article 262 of the Criminal Code of Ukraine); theft, appropriation, extortion of narcotic drugs, psychotropic substances or their analogues or their acquisition by fraud or abuse of official powers (Article 308 of the Criminal Code of Ukraine); theft, appropriation, extortion of precursors or their acquisition by fraud or abuse of official powers (Article 312 of the Criminal Code of Ukraine); theft, appropriation, extortion of equipment intended for the manufacture of narcotic drugs, psychotropic substances or their analogues, or their acquisition by means of fraud or abuse of official powers and other unlawful actions with such equipment (Article 313 of the Criminal Code of Ukraine); violation of established rules of circulation of narcotic drugs, psychotropic substances, their analogues or precursors (Article 320 of the Criminal Code of Ukraine); theft, appropriation, extortion of documents, stamps, seals, their acquisition by means of fraud or abuse of official powers or their damage (Article 357 of the Criminal Code of Ukraine); theft, appropriation, extortion by a serviceman of weapons, ammunition, explosives or other combat substances, means of transport, military and special equipment or other military property, as well as their acquisition by means of fraud or abuse of official powers (Article 410 of the Criminal Code of Ukraine). These acts, which in their “pure” form do not constitute corruption, but can be attributed to such actions only in view of their commission by certain categories of persons, determined at the level of Part 3, 4 of Article 18 of the Criminal Code of Ukraine and in the notes to Article 364 of the Criminal Code of Ukraine.

The second group is already the actual corruption crimes themselves, which exclusively contain the unlawful corruption component: misuse of budget funds, budget expenditures or granting of credits from the budget without established budget allocations or with their excess (Article 210 of the Criminal Code of Ukraine); bribing an employee of an enterprise, institution or organization (Article 354 of the Criminal Code of Ukraine);

abuse of power or official position (Article 364 of the Criminal Code of Ukraine); abuse of power by an official of a legal entity of private law irrespective of the organizational and legal form (Article 364-1 of the Criminal Code of Ukraine); abuse of power by persons providing public services (Article 365-2 of the Criminal Code of Ukraine); acceptance of a proposal, promise or obtaining an unlawful benefit by an official (Article 368 of the Criminal Code of Ukraine); illegal enrichment (Article 368-2 of the Criminal Code of Ukraine); bribery of an official of a legal entity of private law irrespective of the organizational and legal form (Article 368-3 of the Criminal Code of Ukraine); bribery of the person providing public services (Article 368-4 of the Criminal Code of Ukraine); a proposal, a promise or an unlawful benefit to an official (Article 369 of the Criminal Code of Ukraine); abuse of influence (Article 369-2 of the Criminal Code of Ukraine)[9].

According to some researchers, the lack of a single generalized concept of "corruption crime" is a legitimate step, taking into account the impossibility of adapting and extending a certain interpretation of such concept to a limited range of corruption acts. Researchers point out that it is impossible to develop a generalized legal structure to such extent that would reflect absolutely all manifestations (signs) of corruption, and therefore the application of such approach, original to a certain extent, to distinguishing acts that are corruptive is absolutely logical[10]. Moreover, it is reasonable to support the idea that at the present stage the tendency of changing philological (grammatical) interpretation of the corruption concept becomes noticeable, because its understanding (from the Latin corrumpere – "deprave") begins to prevail as disintegration, depravity, etc., not as bribery, corruption as it was[11]. One began to include in corruption such acts that violate the established procedure for the implementation of financial transactions (financial activities) or so-called financial law order, which determines the conduct of various types of economic activity.

[9] Кримінальний кодекс України : Закон України від 5 квітня 2001 року № 2341-III [Електронний ресурс]. – Режим доступу : http://zakon4.rada.gov.ua/laws/show/2341-14.

[10] Кримінальна відповідальність за корупційні правопорушення [Електронний ресурс]. – Режим доступу: http://jurblog.com.ua/2017/06/kriminalna-vidpovidalnist-za-koruptsiyni-pravoporushennya/.

[11] Стрельцов Є.Л. Еволюція у розумінні корупції: зміна акцентів / Соціальна функція кримінального права: проблеми наукового забезпечення, законотвоення та правозастосування : матеріали міжнар. наук.-практ. конф., 12-13 жовт. 2016 р. / редкол.: В. Я. Тацій (голов. ред.), В. І. Борисов, (заст. голов. ред.) та ін. – Х. : Право, 2016. – 564 с. С. 65 – 70.

Legislative provisions on the fight against corruption crimes are sufficiently unbalanced, and, on the contrary, decriminalization of many acts has taken place under the idea of strengthening the fight against corruption. Thus, excess of authority is unjustly decriminalized, committed by an official who is not a law enforcement official (Article 365 of the Criminal Code of Ukraine). As a result, the courts and authorities of the pre-trial investigation are forced either not to bring to justice the persons who commit acts of significant social danger or to "adjust" unlawfully the qualification of the committed act to abuse of power or official position (Article 364 of the Criminal Code of Ukraine), although it is known there is an essential difference that between excess and abuse[12].

On the other hand, the qualitative filling of the list of corruption crimes can still be put in doubt. In particular, certain acts belonging to the first group of corruption offences (acts stipulated in Articles 262, 308, 312, 313, 320, 410 of the Criminal Code of Ukraine) are not included in existing international legal acts as such. However, some authors emphasize that "the consolidation of the list of corruption crimes in the law on criminal liability was primarily aimed at preventing or complicating the application of preferential (incentive) norms of criminal law to those who committed such acts (in particular, the institute of exemption from criminal liability, the appointment more lenient punishment than prescribed by law, exemption from punishment with trial or serve sentence by amnesty, removal of conviction, etc.)"[13].

This state of affairs in the current criminal law is explained by the "plateau effect", in which there is a national criminal law doctrine, and due to which the latter does not develop a criminal law with the necessary effectiveness coefficient necessary for an ordinary person and expected by society[14]. It is worth mentioning that initially the legislative definition of corruption crimes in the National Criminal Code appeared on the basis of

[12] Пономаренко Ю.А. Деякі перспективи розвитку кримінально-правової політики України на основі Доської Декларації 2015 року / Соціальна функція кримінального права: проблеми наукового забезпечення, законотворення та правозастосування : матеріали міжнар. наук.-практ. конф., 12-13 жовт. 2016 р. / редкол.: В. Я. Тацій (голов. ред.), В. І. Борисов, (заст. голов. ред.) та ін. – Х. : Право, 2016. – 564 с. – С. 142–146.

[13] Тютюгін В. І. Поняття та ознаки корупційних злочинів / В. І. Тютюгін, К. С. Косінова // Вісник Асоціації кримінального права України. – 2015. – № 1(4). – С. 391–392.

[14] Савінова Н.А. Ефект плато (plateau effect) у парадигмі вітчизняної кримінально-правової доктрини / Соціальна функція кримінального права: пролеми наукового забезпечення, законотворення та правозастосування : маеріали міжнар. наук.-практ. конф., 12-13 жовт. 2016 р. / редкол.: В. Я. Тацій (голов. ред.), В. І. Борисов, (заст. голов. ред.) та ін. – Х. : Право, 2016. – 564 с. – С. 119–124.

the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine" on October 14, 2014,[15] which supplemented Article 45 of the Criminal Code of Ukraine, containing a list of corruption crimes. However, later on, the version of the said note was revised by law and on the basis of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Activities of the National Anti-Corruption Bureau of Ukraine and the National Agency for the Prevention of Corruption" on February 12, 2015, the note to the Article 45 of the Criminal Code of Ukraine received a current version[16]. According to the above norm, the legislative definition of corruption offences is given not in the context of their broad description with the disclosure of specific features, but by the listing of specific articles of the Criminal Code of Ukraine, establishing liability for such socially dangerous infringements, that is, the lawmaker gave their complete list.

It should be emphasized that in theory and in practice, there are also many disputable (problematic, controversial) issues regarding criminal liability and punishment for corruption crimes that require a fundamental solution. It is difficult to make an exhaustive list of such issues (for example, what is the relation between the terms "civil servant"« and "official", what specifically contains the terms "acceptance of a proposal" and "acceptance of promise"; whether the term "expression" is not narrow in clause 3 of the note to Article 354 of the Criminal Code of Ukraine and whether it would be worthy to replace it with a phrase "a notification in any way"; whether a promise of unlawful profit is possible if the intention is announced with a notification about time and place, but not on the method; what is the content of the structure of "any other benefits of non-material or non-monetary nature", etc.)[17].

Absolutely effective prevention and counteraction to corruption is an objective necessity for the further positive development of Ukraine as a law-governed, democratic and social state. Meanwhile, despite the considerable amount of scientific research and legislative acts, active and loud statements made by government officials, it should be noted that

[15] Про Національне антикорупційне бюро України: Закон України від 14 жовтня 2014 року № 1698-VII [Електронний ресурс]. – Режим доступу : http://zakon4.rada.gov.ua/laws/show/1698-18/page.

[16] Про внесення змін до деяких законодавчих актів України щодо забезпечення діяльності Національного антикорупційного бюро України та Національного агентства з питань запобі– гання корупції : Закон України від 12 лютого 2015 року № 198-VIII [Електронний ресурс]. – Режим доступу : http://zakon4.rada.gov.ua/laws/show/198-19/paran27#n27.

[17] Савченко А. В. Корупційні злочини (кримінально-правова характеристика) навч. посіб. / А. В. Савченко – К. : «Центр учбової літератури», 2016. – 168 с.

today, in fact, there are no significant results, and the state of the fight against corruption remains to be unsatisfactory.

The search for specific reasons for the existence of corruption in each individual society is determined to be defeated in advance. However, it is reasonable to support the opinion of Professor O. M. Kostenko, who emphasizes that present corruption in Ukraine is a crisis-type corruption; it is a product of a deep social crisis in Ukraine. "Such corruption has the ability to bring to nothing any reforms in the country, and also causes the alienation of Ukraine in the world. The so-called "corruption component" plays a role both in what happened in Crimea and in today's situation in the East of Ukraine: if Ukrainian society had not suffered from corruption, then everything could have been different. Therefore, corruption is a political problem number one for Ukraine"[18].

The complexity of counteracting to corruption at the present stage is in the prevalence of the second of two basic types of corruption, with the following names proposed: 1) "Roman type" (to pay for obtaining the excessive or forbidden); 2) "Byzantine type" (to pay for obtaining the proper, guaranteed by laws)[19].

There is no point in idealizing and pointing out on the fact that economically and socially developed countries do not have corruption. Scandals about its first, that is, Roman type at the level of deputy minister, periodically appear in many countries in Europe and America. However, in the case of Byzantine type, in all developed countries, there are positive results in counteracting to such manifestations. That is why their disapproval is clear to those undeveloped subjects of international law, where corruption of the second (Byzantine) type (Ukraine, Cameroon, Iran, Nepal, Nicaragua, Paraguay, etc.) is not overcome. In connection with this, the urgent need of Ukrainian society today is the real destruction of the basis of "Byzantine" type[20] of corruption and the development of effective levers for counteraction to Roman-type corruption.

In connection with the above, it is reasonable to support the opinion of Professor O. M. Kostenko, who points out that a truly effective anti-corruption policy in Ukraine could be a policy based on the concept of

[18] Костенко О.М. Корупція в Україні – це наслідок соціальної аномалії [Електронний ресурс]. – Режим доступу: http://slovoprosvity.org/2017/08/24/koruptsiya-v-ukrajini-tse-naslidok-sotsialnoji-anomaliji/.

[19] Gorky Look. Сорта «того-самого», або Каррумба! (парт оне). Коррумба, або Дай сюда, иди отсюда (парт тво) // [Електронний ресурс] – Режим доступу : http://gorky-look. livejournal.com/71734.html.

[20] Радутний О.Е. – інформаційний образ ворога у кримінальному праві України [Електронний ресурс] – Режим доступу : http://ippi.org.ua/sites/default/files/13_2.pdf.

"anti-corruption clutches", confirmed by experience, for example, in Singapore. In particular, such policy is to combine the two "bites" into "anti-corruption clutches": the first one is deep social reforms that have anticorruption potential, and the second one is the use of repressive measures against corrupt officials to be used by anti-corruption bodies[21].

Attempts to overcome the crisis type of corruption only by improving the anti-corruption legislation and anti-corruption bodies are hopeless. "It is impossible to create such a law or an anti-corruption body, which could not be abused if there is a social anomaly in a society in which to live and work honestly and lawfully is not beneficial. Moreover, it is possible to form the so-called "police state" under this condition. In the result of social reforms Ukraine should become a country suitable for the lives of honest and law-abiding citizens. Only then, according to the concept of "anti-corruption clutches", the anti-corruption legislation and any anti-corruption authorities, along with civil society institutions can be effective"[22].

CONCLUSIONS

Summarizing the results of the special literature and the current legislation analysis, it is worth pointing out that corruption is currently threatening the ideals of democracy, human rights and the law order in general, destroying proper management, good faith and social justice, impeding competition and economic development of our state, undermining the moral principles of society. Moreover, corruption is closely linked to other forms of crime, including organized crime and economic crime. Corruption also covers enormous amounts of assets that can constitute a significant share of public resources and endangers political stability, sustainable development of the state, its national security, including critical infrastructure objects.

Undoubtedly, the Ukrainian state is able to gradually change the current situation by increasing the public disapproval of corrupt officials, creating anti-corruption bodies, updating anti-corruption legislation, appearing of a corruption exposing movement, etc. So, according to sociological surveys, in 2014, only 13% of Ukrainian citizens were ready

[21] Костенко О.М. Причина української корупції – аномальний стан суспільства, за якого жити чесно – невигідно [Електронний ресурс]. – Режим доступу: http://nikorupciji.org/2017/03/16/prychyna-ukrajinskoji-koruptsiji-anomalnyj-stan-suspilstva-za-yakoho-zhyty-chesno-nevyhidno/.

[22] Костенко О.М. Причина української корупції – аномальний стан суспільства, за якого жити чесно – невигідно [Електронний ресурс]. – Режим доступу: http://nikorupciji.org/2017/03/16/prychyna-ukrajinskoji-koruptsiji-anomalnyj-stan-suspilstva-za-yakoho-zhyty-chesno-nevyhidno/.

to report on known cases of corruption. In 2015, Transparency International conducted an information campaign "They would not be silent", which allowed seeing city lights in different cities calling for not to keep silent about corruption for several months. As a result of this campaign – there were three times more accusers of corruption. Today, 45% of Ukrainians declare their willingness to talk about cases of corruption known to them. At the same time, only 2% of informants appeal to law enforcement agencies about corruption facts known to them.

Nevertheless, despite all the positive developments, Ukraine remains at one level in relation to the anticorruption index with Iran, Cameroon, Nepal, Nicaragua and Paraguay. The conducted sociological surveys show that today more than half of population of our state is inclined to commit corruption offences in case it can contribute to solving the problem. In addition, a significant share of the population, taking into account the lack of relevant knowledge, does not classify certain behaviors as corrupt, while recognizing the non-compliance of such behavior with the norms of morality or professional ethics.

Another reason for the slow overcoming of corruption is such state of the society in which to live and work honestly is unprofitable, and vice versa, it is profitable to live and work only dishonestly. In this regard, it is worth emphasizing on the fact that, according to the United Nations, Ukraine is at a level of salary somewhere between Nigeria and Mongolia, and more than 80% of Ukrainians are over the limit of poverty (in poor countries in Africa the poverty line is $ 1.25 US per day, in Ukraine – $ 1.5)[23].

However, the main factors explaining the spread of corruption in Ukraine are not only extremely low incomes but also many other things: the absence of a negative attitude to corruption among the population, inadequate and economically unreasonable salaries of civil servants and persons equated to them, a delay in real punishment of corrupt officials, an increase in the corrupt component in the relations between business and government, the ineffectiveness of the bodies that identify, prevent and fight with corruption, ignoring the results of science of new research on preventing and counteracting to corruption, national anti-corruption legislation gaps and so on. Among the listed above, a special attention should be paid to a scientific and normative component in counteracting to corruption manifestations, in particular, in view of theoretical

[23] 80 відсотків населення України живе за межею бідності – ООН [Електронний ресурс]. – Режим доступу : http://www.radiosvoboda.org/content/article/26959841.html.

developments in the field of criminal law and relevant articles of the Criminal Code of Ukraine.

In view of the above, it is worth noting that the formation of a legislative and institutional framework for the development and implementation of state anti-corruption policy in Ukraine has not been fully completed, in particular, there have been conflicts between the relevant legislative acts regarding the powers of the anti-corruption bodies and their proper cooperation, and no steps have been taken to eliminate them immediately; further harmonization of national legislation with international treaties and the practice of their application is necessary. Certainly, overcoming corruption is closely linked with the development of a new Ukraine – a country without social anomalies, which will be based on such a social order, in which the norm of social life of people is honesty and legal culture. Without these factors, the progress (political, economic, legal, moral) and the effective process of corruption counteraction can not be implemented in the country.

That is why today it is absolutely necessary to continue the formation of a negative attitude towards corruption among the population, because without anti-corruption morality, any anti-corruption legislation is a "paper tiger". According to this conception, the formula for counteraction of corruption should be as follows: "the formation of anti-corruption morality in society plus the application of anti-corruption legislation". One without the other is like scissors with one blade, if the second is broken. In this regard, it is worth mentioning Thomas Carlyle's idea: "Any reforms, except moral, are useless"[24].

SUMMARY

The article mentions that corruption can counteract to the effective development of the state economy and civil society, being at the stage of formation. It is one of the main causes of political and social instability in Ukraine.

Corruption has a devastating impact on all domains of life of Ukrainian society, and it is a serious obstacle to economic reforms, it impedes the formation of market institutions, prevents from investment and threatens Ukrainian national security, including critical infrastructure onjects.

[24] Костенко О.М. Причина української корупції – аномальний стан суспільства, за якого жити чесно – невигідно [Електронний ресурс]. – Режим доступу: http://nikorupciji.org/2017/03/16/prychyna-ukrajinskoji-koruptsiji-anomalnyj-stan-suspilstva-za-yakoho-zhyty-chesno-nevyhidno/.

At the same time, corruption has a nationwide systemic nature and influences Ukrainian politics, economics and other domains of public life significantly. High cost of living and a low level of legal and political culture in Ukraine predetermine the spread of corruption as a social phenomenon. It is the most essential reason for decreasing in the level of public trust to all public authorities.

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THE PUBLIC PROPERTY INSTITUTION IN THE MODERN SYSTEM OF GENERAL AND SPECIAL ADMINISTRATIVE LAW

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INTRODUCTION

The public property institution is connected with fundamental static administrative-legal categories in its essential characteristics. In fact, fundamental grounds of General administrative law establish the boundaries of public property legal protection and management in this field. At the same time, there is a situation when the subjects of public and private law, being the participants of administrative legal relations, for proper exercise of their powers require a basis for such activity which is, certainly, public property. This indispensable connection of institutional and material-financial categories of administrative law allows carrying out public management in the most effective way as a phenomenon of legal reality using all possible range of public administration activity tools.

In this case, there is a significant influence of Special administrative law on the public property institution, since for the implementation of relevant legal protection conditions, the specific regime features of property depending on the field of its use are involved. In essence, public property, as a rule, serves as a fundamental element for functioning of the most institutions of Special administrative law, determining the legal regime peculiarities of respective types of the said property. The state of things given is connected with the fact that public management in any field of public life is based on material and financial resources, which should meet the needs and interests of the subjects of public administration, on the one hand, and consumers of administrative services and public property users, on the other hand.

The urgency of the research topic is determined by the fact that as a result of the formation of new theoretical constructions in implementation of the public property legal regime, alternatives to public property in the form of powerful transnational corporations, etc. have begun to appear. In order to ensure an equitable transformation of public property management, the relations between the public property institution and

fundamental components of Special administrative law taking into account public interest, rights and interests of wider population should be ensured. As a result, the public property legal regime may be restructured taking into account such characteristics as joint participation, pluralism, transparency and consistency.

1. The Public Property Institution in the System of General Administrative Law

Based on the content of legal norms regulating activity on public property use, it is possible to establish their public-legal (administrative-legal) nature. This will allow establishing the criteria for the correlation of administrative law constituent elements with a separate legal establishment in the form of a public property institution.

Taking into account the provisions above stated on institutionalization of a range of legal norms establishing the public property legal regime, one can agree with K. S. Belsky in the fact that evolution of public relations, which are the subject of administrative law legal regulation, is based on dynamic systemic-structural connections. At the same time, fast response to the conditions of surrounding environment, social needs etc. is taking place, which determines the appearance of changes in a relevant system[1]. From the perspective of the provisions stated on evolution of administrative law systematization, it is necessary to point out to the improvement of independent and integral nature of the general administrative law system by including the public property institution there as well. This will be ensured by resilience of administrative law norms regulating the public property legal regime and the dynamic orientation of the relevant law institution in the mobile system of General administrative law.

In general, one should proceed from the fact that theoretical provisions and general regulatory and general protection norms, united in the system of general administrative law, are characterized by universality, regular typical nature, and public management, organizational and functional generalization. The above mentioned features are used in highlighting the conceptual characteristics of administrative law, content manifestations of its norms and relations, and

[1] Бельский К.С. О предмете и системе науки административного права. Государство и право. 1998. № 10. С. 18–26.

the regulation of public administration functions. The said legal regulators establish a generalized paradigm for realizing the administrative legal status of the relevant participants in administrative legal relations, forms and methods of public management, taking into account the requirements of lawfulness of such activity, including in terms of administrative discretion and administrative coercion use. First of all, implementation of these provisions is carried out through implementation of constitutional and legal norms in an orderly system of administrative law[2]. In essence, theoretical provisions and administrative legal norms on the establishment of legal regimes for various types of public property in relation to interaction of public administration bodies with each other and with private law subjects should be based on observance of principles of the supremacy of law and lawfulness, equality, legality and effectiveness.

Therefore, it can be stated that the public property institution is a part of the General administrative law system, primarily because of interconnectedness with its fundamental elements through the connection of theoretical provisions and administrative legal norms. The internal content of General administrative law allows setting of limits for substantial, institutional, functional and methodological manifestations of the practical implementation of public property legal regimes, in particular, taking into account customs, traditions and unwritten rules of conduct when using the latter. Alternatively, the hierarchical structure of these legal regulators allows unifying the substantive and procedural aspects of the relevant administrative relations taking into account the national interests of Ukraine and the public interest of participants in these relations.

In terms of the views expressed on the place of the public property institution in the system of general administrative law, one can agree with those scholars who support such an institutional affiliation[3]. Such conclusion is based on the provisions of Articles 142, 143 of the Fundamental Law of Ukraine on natural resources as public property, as

[2] Шмідт-Ассманн Е. Загальне адміністративне право як ідея врегулювання: основні засади та завдання систематики адміністративного права / відп. ред. О. Сироїд ; пер. з нім. Г. Рижков, І. Сойко, А. Баканов. 2-ге вид., перероб. та доп. Київ : К.І.С., 2009. 552 с.

[3] Комзюк А.Т., Бевзенко В.М., Мельник Р.С. Адміністративний процес України: навч. посіб. Київ: Прецедент, 2007. 531 с.

well as real estate as property, which ensures the functioning of public administration subjects[4].

In material-financial dimension, the said public property must be used by public administration subjects for fulfillment of functions vested by law and conditions for its use by private law subjects to satisfy public interest. These postulates are primarily enshrined in constitutional norms, and are detailed in administrative legal norms concerning regulation of public relations on the practical implementation of the public property legal regime. The norms of private (civil) law may also be applied subsidiary to establish certain institutional and functional aspects of public property use by private law subjects.

We should note that the additional argument for attribution of the public property institution to the system of general administrative law is, for example, the German practice of administrative and legal regulation in the field of use of "public administration property", "public financial property", "public property that is in common use"[5]. At the same time, administrative legal norms governing the public property use in Germany, determine the use of both movable and immovable property in order to ensure fulfillment of functions of public administration bodies. In the given perspective, the utilitarian purpose of such property should be taken into account, including the use of natural resources, buildings, ammunitions, documentation, finance, public shares (equity shares) in economic partnerships, etc. Thus, the regulatory dimension of the public property institution is based on the accumulation of capital necessary for the fulfillment of the goal and tasks of public administration, as well as private law subjects involved in administrative legal relations on public property use. Definitely, such public property should directly or indirectly promote the exercise of public interest. The attribution of the public property institution to the general administrative law system is determined by the fact that the procedure for implementing the mechanism of administrative and legal support, use, transfer of such property, in particular, in public legal succession, has a clearly expressed administrative and legal nature. At the same time, in Ukraine the same procedural aspects of relations concerning implementation of the public property legal regime are not fully regulated at the legislative level.

[4] Конституція України: Закон від 28.06.1996 р. № 254к/96-ВР: із зм. і доп. станом на 30.09.2016 р. *Офіційний вісник України*. 2010. № 72/1. Спеціальний випуск. С. 15. Ст. 2598.

[5] Hans P. Lehrbuch der Verwaltung. Berlin-Göttingen-Heidelberg. Springer-Verlag. 1949. 560 s.

For instance, legal regulators of the procedure for enforced collection of the property of communal enterprises by a state executive are established only in the letter of the Ministry of Justice of Ukraine[6], which by its nature can not be considered as a source of administrative law at all. In fact, in Ukrainian realities, the legal status of public property is not fully defined, which does not contribute to the sustainability of implementation of regime characteristics and understanding of the place and purpose of public property in the system of law, in particular administrative one. The same situation leads to abuses and conflicts in using public property. Thus, according to the media, in Ukraine there are various "schemes" of appropriating public property by hostile takeovers, lease with subsequent privatization or illegal privatization of such property immediately[7]. In this regard, one must realize that the main problem is lack of a sufficient basis of administrative law regulators to implement constitutional provisions on public property and public management in the field of its use. In fact, the law does not even establish the definition of the public property legal category or provide the detailed procedure for its use by public and private law subjects. As a rule, only certain manifestations of the legal regime for certain public property types are established. In this regard, the Soviet traditions of public management of such property continues to prevail which are not effective enough. This state of things deprives the private law subjects as representatives of Ukrainian people's will of the right to real use of public property, in particular natural resources, infrastructure objects, etc.

Based on the provisions concerning the place of public property in the system of General administrative law, the main milestone in improving the system-structural characteristics of the said property and understanding the purpose of the institution mentioned above should be the focus on the "vertical" orientation. In this regard, E. B. Steison focused on taking into account descriptive, analytical and evaluation characteristics of historical realities, organizational structure and

[6] Щодо порядку звернення стягнення на майно комунальних підприємств : лист Міністерства юстиції України від 27.12.2004 № 25-32-3644 URL: http://www.uazakon.com/document/fpart56/idx56067.htm (дата звернення: 07.05.2019).

7 Щодо порядку звернення стягнення на майно комунальних підприємств : лист Міністерства юстиції України від 27.12.2004 № 25-32-3644 URL: http://www.uazakon.com/document/fpart56/idx56067 .htm (дата звернення: 07.05.2019).

functions, in particular quasi-legal ones, etc[8]. The described criterion allows taking into account the material-procedural dimension of the public property institution when establishing the fundamental aspects of the legal regime functioning of the latter. In material terms, the purpose of this institute takes into account theoretical generalizations in part of the agreed competence of public administration and the establishment of a prevailing state policy on the public property management. Such standards should, in particular, be agreed with the constitutional guidelines and provisions of administrative legal norms, which refer to the clear formulation of the procedure for state policy implementation, conditions and procedures for a public administration activity, administrative discretion, etc. Alternatively, the procedural aspect of the purpose of the public property institution is based on the renewal of the current and prospective plan, including taking into account the institutional features of public property.

In foreign doctrine, the doctrinal approach is prevalent, according to which the purpose of the public property institution is appropriate to consider through the prism of categories of liquidity, managerial involvement and profitability[9]. Thus, liquidity can adequately and fully illustrate the specified characteristics of public finances in terms of transactions with such public property, time parameters of payments and the mechanism for attracting additional funds. On the contrary, managerial involvement is more universal category and can reveal the purpose of the public property institution in the system of General administrative law concerning the needs in time and managerial efforts necessary to ensure proper legal protection and defense of public property. The main thing here is the economic coloring of relevant public-managerial processes, taking into account the profitability of public property use by public and private law subjects. When describing the category of profitability, it should be noted that it has a prospective and retrospective orientation, since it is connected with the consideration of the previous, current and future situation when using public property. As a rule, this criterion is especially relevant when reflecting the long-term purpose of public property, in particular, related to increasing of its

[8] Stason E. B. Jr. Research in Administrative Law. *Faculty Publications*. 1964. Paper 1111. Pp. 99-107 URL: http://scholarship.law.wm.edu/facpubs/1111 (дата звернення: 07.05.2019)

[9] Narula S., Singla M. Empirical Study on Non Performing Assets of Bank. International Journal of Advance Research in Computer Science and Management Studies. 2014. Vol. 2. Issue 1. Pp. 194-199.

investment attractiveness and implementation of profitable projects based on the use of relevant public property.

Thus, it can be stated that the purpose of the public property institution in the system of General administrative law should be based not only on the institutional and procedural aspects of public administration functioning. It is also necessary to take into account the role of public property in the activities of private law subjects. It is worth noting that the approach that deals with the provision of a hierarchical dimension, professionalism in terms of functionality and impartiality is prevalent in the European doctrine on this subject[10]. This allows ensuring the rights of participants in administrative legal relations that are not the subjects of public administration, including users of public property as well as consumers of administrative services. In this regard, the public property institution should lay the foundation for a transparent and inclusive decision-making process in defining the relevant state policy. Thus, the purpose of the studied legal institution is focused on the material-procedural criteria of a "vertical" dimension based on the idea of human-centrism. The formulated criteria, in turn, will promote the institutionalization of the system of public administration bodies involved in public property management which is organized, meritocratic and "bound" by law requirements, as well as the involvement of interested private law subjects that act as participants in administrative legal relations in public property use. In fact, such state of things will ensure satisfaction of the public interest in improving the stability of economic situation and taking into account the needs and legitimate interests of the participants in the said administrative legal relations.

Based on the provisions stated above on the criteria for the formation and purpose of the public property institution in the system of General administrative law, it should be emphasized that this legal establishment, through a combination of homogeneous administrative legal norms aimed at establishing a public management procedure in regulated homogeneous administrative legal relations, acts as the very part of the branch of law mentioned. The described type of administrative legal relations on public property use is one of the key positions for the practical implementation of other institutes of General administrative law, mainly of theoretical orientation. At the same time, it concerns the implementation of all

[10] Kagan E. Presidential Administration. Harvard Law Review. 2001. No. 114. Pp. 2245-2385.

constituent elements of administrative law. Such relatively isolated group of relevant administrative legal norms establishes the areas of functioning of administrative law general and special institutes. Therefore, it is about the whole range of administrative legal relations and, in particular, the implementation of public property legal regimes.

2. Correlation of Special Administrative Law with the Public Property Institution

Administrative-legal dimension of public management contributes to globalization and denationalization of administration powers in Europe[11]. Europeanized administrative law is aimed at the implementation of "competing" lawfulness[12], demonstrating the consideration of legal regulators developed at the central (national) level and fragmentation in the implementation of these provisions in the field of public property use. In fact, it is about the unified dimension of the most significant limits of the practical implementation of the public property institution and decentralization during the implementation of the public property legal regime when it is used within the functioning of legal institutes of Special administrative law. The described dispersion of the administrative law system is compensated at the same time by orientation of its legal institutions to the protection and defense of rights, freedoms and legitimate interests of a person as a central subject of administrative law and a participant in administrative legal relations.

The mentioned recent globalization trends in administrative law development mean gradual disappearance of the boundaries between the legal status of public and private law subjects in administrative legal relations. This leads to a fundamental change in the system-structural characteristics of both General and Special administrative law. Such tendency is also becoming stronger as a result of an increase in comparative orientation of Special administrative law caused by continuous trans-boundary processes of harmonizing the standards of administrative legal activity and improving the quality and efficiency of public administration, in particular, in the field of public property. It is not less important to realize that the category of proportionality can set limits

[11] Rose-Ackerman S. Comparative Administrative Law: Outlining a Field of Study. Windsor Yearbook of Access to Justice. 2010. Vol. 28. No. 2. Pp. 435-449.

[12] Kagan R.A. Adversarial Legalism. The American Way of Law. Cambridge, MA : Harward University Press, 2003. 352 p

for eliminating the boundaries between the public and the private in establishing regime aspects of public property use. At the same time, the significance of bureaucratic procedures which are traditionally crucial for European administrative law decreases in terms of "service nature" of public management.

The described globalization trends in administrative law development clearly indicate the possibility of improving the state policy in the field of public property use, including on the basis of institutional characteristics of Special administrative law. As A. Aman explains, global administrative law can make its contribution to the formation of a "political" society, creating a space for democratic debate[13]. For the functioning of the public property legal institution the indicated fact means that the unity of state policy will promote public inclusiveness. This will increase the freedom of exercise of authority in public property use, as well as lead to the full process of involvement of private law subjects in changing such policies in case of necessity. The said policy should acquire procedural qualities, taking into account public interest, the need to ensure pluralism and subsidiarity in the implementation of the public property legal regime.

Thus, the continuous development of the state policy on public property and renewed economic-political and legal realities of its use, it is possible to propose an inexhaustible list of areas in which a symbiosis of the legal norms of the institutes of General and Special administrative law acts. Thus, in global dimension, through the legal norms included in the system-structural establishments of the Special administrative law, there is an impact on the general-oriented legal norms of the public property institution in the following areas:

– Administrative and political (international relations, internal affairs, justice etc.);

– Public and managerial in relation to customs affairs, natural resources, security provision, information provision, state control;

– Business, economic, in particular agricultural and industrial;

– Social, socio-cultural (educational, scientific, art, sport, tourism, etc.);

– Inter-branch, including management of individual industries (security, defense, transport, healthcare, education, etc.) and inter-branch

[13] Aman A.C. The Democracy Deficit. Taming Globalization Through Law Reform. NY: NYU Press, 2004. 253 p.

management (pricing, accounting and statistics, standardization, metrology, etc.), etc.

The modern stage in the administrative law systematization is primarily aimed not at establishing the procedures and order for the implementation of public management activities[14], but at regulating the relevant administrative relations. The criterion for distinguishing these two approaches can be "the depth of legal regulation"[15]. For the proper and legitimate implementation of provisions of the public property institution, it is necessary to take into account its dynamic nature regarding the subjective, objective and substantial characteristics of the corresponding administrative legal relations. Statics of public property relations should reflect the nature and types of legal regulators of public property relations, as well as the practice of their application by administrative courts. It is also important, when using public property, to regulate the legal guarantees of good practice in administrative legal relations between people as the main subjects of administrative law, between private law subjects and public administration. Such tendency is typical of European administrative law and, taking into account European integration processes, and is extremely relevant for Ukraine.

In this view, public property as an object of public ownership can be perceived as a resource basis for the establishment of effective ways of public development using generally accessible objects to take into account the common benefit[16]. At the same time, taking into account the institutionalization of the place of the public property institution in the system of Special administrative law, the substantive dimension of the legal regime for the use of such property should be considered as the right of civil society to exercise competence directly or through public administration in respect of property that is generally accessible, non-exclusive and not disputable, as well as to exercise legal protection and defense of this property, its interests, public benefits, etc. These relations are formed during public management of specific objects for direct or indirect practical exercise of public interests by public and private law subjects, as a rule, using infrastructure objects and public resources[17]. The

[14] Елистратов А.И. Основные начала административного права. 2–е изд. Москва: Г.А. Леман и С.И. Сахаров, 1917. 294 с.

[15] Мельник Р.С. Система особливої частини адміністративного права України: якій їй бути сьогодні? Юридична Україна. 2008. № 2. С. 23-27.

[16] Мазаев В.Д. Публичная собственность в Росии: конституционные основы. Москва: ОАО «Издательский дом «Городец», 2004. 384 с.

[17] Там само.

category of publicity influences the teleological characteristics of public property, which means, respectively, the use of public and power tools for the exercise of competence in public property. The latter also takes into account the legal regimes of public property on the substantial criterion, characterized by an axiological orientation in satisfying the interests and needs of all members of society.

In the context of the stated provisions on the influence of systemic and structural establishments of Special administrative law on the public property institution, it is also necessary to clarify that all these areas of society life allow regulating administrative legal relations properly as for public property use. Obviously, these are purely public-managerial relations, but a whole range of substantive and procedural relations between public administration bodies and private law subjects with regard to the implementation of the public property legal regime. In this sense, one can partly agree with R. S. Melnyk in the following that through the provisions of Special administrative law differentiation between the respective groups of administrative-legal norms is achieved[18]. At the same time, the latest globalization trends in the formation of the administrative law system, in particular the institutionalization of legal regulators of public property, do not allow supporting in full the thesis on the exclusive differentiation of the corresponding administrative legal relations. It is necessary to achieve an optimal balance between the universal provisions regarding the functioning of the public property legal regime and the peculiarities of certain types of administrative legal relations in the system of Special administrative law.

However, Special administrative law should influence the public property institution primarily through the concept of sustainable development. It is connected with the fact that in developed and developing countries, urban and rural areas are undergoing rapid urbanization. It is the result of natural, socio-cultural and economic changes, population growth in the global perspective, consumption and exhaustion of natural resources, and an increase in the level of environmental pollution. Often such changes take place in connection with public property use. In this regard the foreign doctrine states that sustainable development should ensure the physical, social and psychological environment. In this context, human behavior is

[18] Мельник Р.С. Система адміністративного права України: дис. ... доктора юрид. наук: 12.00.07 / Харківський національний університет внутрішніх справ. Харків, 2010. 417 с.

harmoniously adapted to integration as well as dependence on the natural factor for improving and preventing adverse effects for present and future generations[19]. Establishing the influence of constituent elements of Special administrative law on the public property institution, it is necessary to focus on the fact that considering the concept of sustainable development can improve the quality of life and take into account public interest. In this perspective it is about the motives and legitimate interests of public administration bodies that manage such property, private law subjects as users of public property and consumers of relevant administrative services, as well as subsequent generations who will use the property mentioned. It can be manifested contextually and causally in political, economic, social, cultural, etc. perspectives of a naturally oriented active (public-management) orientation to ensure the long-term development of civil society, taking into account national interests. The ways to achieve the proposed situation may include measures to increase public inclusiveness and involvement of private law subjects in formulation of the state policy in the area of establishing a public property legal regime, in particular forums.

CONCLUSIONS

One can state that the place and purpose of the public property institution in the system of General administrative law are aimed at institutional-procedural aspects of public administration functioning and ensuring the hierarchical dimension and impartiality of public law subjects using public property. In fact, General administrative law absorbs the public property institution in connection with the general orientation of the legal norms of this establishment, including the interaction with private law subjects in public property use. Such systemic-structural links allow guaranteeing the effectiveness of a public administration activity in the exercise of its powers, taking into account the public property legal regime based on unified standardization norms and rules of conduct.

A special administrative law forms the space for the implementation of the procedural component of the public property legal regime. Through the concept of sustainable development, fundamental characteristics of this property can be determined taking into account not only the national public interest, but also the trends of global supranational administrative

[19] Brandon P.S., Lombardi P. Evaluating Sustainable Development in the Built Environment. NY : Wiley-Blackwell, 2011. 280 p.

law. The legal norms covered by the system of Special administrative law establish the dynamics of public property relations, which, in particular, affects the content of the legal category of public administration subjects' liability in the administrative legal relations mentioned.

SUMMARY

The article deals with the criteria for the formation and purpose of the public property institution in the system of General administrative law. It is proved that the attribution of the public property institution to the system of General administrative law is determined by the procedure for the implementation of the mechanism of administrative and legal support, use, transfer of such property having a clearly expressed administrative and legal nature. In addition, the correlation between the public property institution and the fundamental components of Special administrative law taking into account public interest, rights and interests of wider population was considered. An attempt was made to reveal the specificity of influence of Special administrative law on the public property institution through the concept of sustainable development.

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INTERNATIONAL STANDARDS IN THE FIELD OF HUMAN RIGHTS PROTECTION AS A COMPONENT OF LEGAL POLICY OF THE STATE AS FOR TEMPORARILY OCCUPIED TERRITORIES

Iliashko O. O.

INTRODUCTION

The main task of the state legal policy under the conditions of a hybrid war is to create an effective normative-legal basis for proper counteraction to hybrid threats as well as for taking preventive measures, eliminating separatist spirits and destructive consequences for the state, society, and people etc. Practical embodiment of theoretical achievements on this issue can determine the further development of Ukrainian legal system.

Our state strives for embodiment of constitutional norms concerning human rights and freedoms provision, but there are still some problem issues necessary to be resolved. The issue of ensuring rights for persons, living at temporarily occupied territories, requires further legal regulation. Moreover, the part of constitutional-legal norms, guaranteeing human rights, has no mechanisms for their exercise at the temporarily occupied territories that gives a reason for discussion among scientists and practitioners.

For that reason the necessity to develop effective state legal practice at the temporarily occupied territories under the conditions of hybrid war arises and it is a part of the state policy that is justified and consistent activity of state authorities, self-government bodies aimed at effective mechanism of legal regulation of public relations at the temporarily occupied territories under the conditions of hybrid war and is reflected in a set of ideas, measures, tasks, programs, guidelines exercising in the filed of law and by virtue of law and it is based on fundamental law principles.

1. Problems of Legal Regimes of Annexed and Occupied Territories

Since the beginning of occupation of The Crimean Peninsula and armed conflict in Donbas, Ukraine has experienced the hardest

humanitarian crisis in its history. In the Order of the Verkhovna Rada of Ukraine On recommendations of Parliament hearings on the subject "The state of observing rights of internally displaced people and citizens of Ukraine living at the temporarily occupied territory of Ukraine and at temporarily uncontrolled territory in the area of anti-terrorist operation it is said about the following: "… In Ukraine the events took place that influenced human rights provision of the majority of people in the state fundamentally and dramatically. As a result of unhidden aggression of Russian Federation in March 2014, the Autonomous Republic of Crimea was annexed and an armed conflict was started in Donetsk and Luhansk regions"[1].

Today, the state is working towards stabilization of situation, guarantee of constitutional rights and freedoms of citizens at the annexed and occupied territories. The legal basis is being developed, the Ministry on Issues of Temporarily Occupied Territories and Internally Displaced People has been established as a coordinator of central executive body as well.

The logic of such steps is to observe the provisions of Article 3 of Basic Law of Ukraine: A person, his/her life and health, honesty and dignity, inviolability and safety are recognized in Ukraine as the highest social value. Human rights and freedoms as well as their guarantees determine the content and orientation of the state activity. The state is responsible to a person for its activity. Establishment and provision of human rights and freedoms is a main duty of the state"[2]. However, today it is difficult to execute these provisions in the present military-political situation because not all steps taken are effective enough. As T. Popova emphasizes, "instead of implementation of the holistic information policy, many measures were taken, in fact, manually in the area of anti-terrorist operation in Ukraine, often balancing on the threshold of permitted"[3]. Thus, legal science has an urgent problem such as studying the legal regime of the annexed and occupied territories.

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[1] Про Рекомендації парламентських слухань на тему: «Стан дотримання прав внутрішньо переміщених осіб та громадян України, які проживають на тимчасово окупованій території України та на тимчасово неконтрольованій території в зоні проведення антитерористичної операції»: Постанова Верховної Ради України від 31.03.2016 р. № 1074-VIII. URL: http://zakon0.rada.gov.ua/laws/show/1074-19.

[2] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

[3] Попова Т. До питання відновлення суверенітету України над тимчасово окупованими територіями. URL: https://www.google.com.ua/url?sa=t&rct=j&q=&esrc=s&source=web&cd=33&cad=rja&uact=8&ved=0ahUKEwj_tO6gi_XXAhWsZpoKHbW4Cxw4HhAWCDYwAg&url=https%3A%2F%2Fwww.radiosvoboda.org%2Fa%2F28842999.html&usg=AOvVaw0TAk1KLnYOb3JSfhpSpwwW.

Since 2014 there have been discussions among professionals on sovereignty of Ukrainian state, normative regulation of counteraction to Russian aggression. However, both scientists and practicing lawyers as well as politicians often substitute such fundamental concepts as "aggression", "annexation", "occupation", "hybrid war", "hybrid occupation" etc. To eliminate contradictions one should study a legal regime of annexed and occupied territories, determine the concepts of annexed and occupied territories, peculiarities of their legal regime.

The concept of "aggression" in politics After events in 2014 in the Autonomous Republic of Crimea the word "annexation" was introduced in various public discourses actively, and the word "occupation" – from the beginning of armed actions in Eastern Ukraine. Both these concepts are attributed to the third one, namely, aggression because annexation and occupation are various types of aggression. In this context, O. Zadorozhny, the author of the monograph "Annexation of Crimea – International Crime" (2015), emphasizes that aggression is "the gravest international crime violating imperative norms of international law and putting at threat international law order and key values for all state and world society in general. For that reason, international-legal liability of an aggressor state has considerable peculiarities: it appears to both affected state and international society in general"[4].

The deep reflection of aggression issue at the international level started after the World War II because that war revealed global problems in the fields of peace stability and human rights guarantee. The world community, almost for the first time in history, re-evaluated the meaning of democratic principles of public order, human rights and freedoms. The regime of German National-Social Labor Party, lead by A. Hitler is associated with various manifestations of aggression: violence on a massive scale, genocide, racism, and dictatorship.

For that reason, during post-war period the theory of natural law was revived, the idea of non-alienation of human natural rights regardless skin color, origin, property status was spread. The idea of a new international law order based on values of fundamental human rights and freedoms was established. Therefore, institutional mechanisms of human rights protection were renewed: they transferred from mere internal state competence ant obtained international meaning. At the same time, the

[4] Задорожній О. В. Анексія Криму – міжнародний злочин: монографія. Київ: К.І.С., 2015. 576 с.

awareness that it was necessary to provide the exercise of human rights and freedoms both at global and regional level appeared.

In Europe, which suffered from that war the most, integration and coordination processes started due to which a historical document – Convention for the Protection of Human Rights and Fundamental Freedoms was signed at the session of Committee of Ministers of the Council of Europe in Rome. In a modern education literature it is often said about meaning of this event in such a way: "Adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms became a revolutionary event in international law of that time because the latter not only determined a certain list of human rights and freedoms as it was in the Universal Declaration of Human Rights, but also created special provisions having obtained powers to carry out judicial and quasi-judicial supervision on its provision observance and to consider claims from private people v. states"[5].

On January 21st, 1959 The European Court of Human Rights as a unique international justice body (ECHR) was established, jurisdiction of which covered member-states of the Council of Europe. According to Article 19 of the European Convention on Human Rights, "to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and Protocols there shall be set up a European Court of Human Rights… It functions on a regularly basis"[6].

Thus, the issue of aggression in internal and foreign policy in the middle of 20th century began to resolve on the very basis of provision of human rights and freedoms.

As O. Zadorozhny wrote, giving international legal qualification to the actions of Russia against Ukraine, first of all, it is worth noting about the gravest crime against peace and safety – trigger and conduct of an aggressive war. "…aggression is understood, on the one hand, as an action, for which states are responsible, on the other hand, as a crime of physical persons, providing individual liability under international criminal law"[7].

[5] Тлумачення та застосування Конвенції про захист прав людини й основоположних свобод Європейським судом з прав людини та судами України : навч. посіб. / [М. В. Мазур, С. Р. Тагієв, А. С. Беніцький та ін.]; за ред. В. М. Карпунова. – Луганськ: РВВ ЛДУВС, 2006. 600 с.

[6] Європейська конвенція з прав людини. URL: https://www.echr.coe.int/Documents/Convention_UKR.pdf.

[7] Задорожній О. В. Анексія Криму – міжнародний злочин: монографія. Київ: К.І.С., 2015. 576 с.

In dictionaries the concept **"annexation"** means (Latin annexio – attachment) "violent attachment (seizure) of a part or all territory of one state or people by another state, forced keeping of people within the borders of another state"[8]. Under annexation, the state borders are imposed violently, contrary to the will of its population, which is incompatible with the basic principles of modern international law and the UN Charter. In accordance with the UN Charter (Article 1; 2), members of this organization must adhere to the principle of equality and self-determination of people and refrain from threats of force or its application against the territorial integrity and political independence of any state. Annexation is a gross violation of contemporary international law.

Throughout the history of mankind it was through the annexation that the territories were obtained. Annexations were associated with conquests and were considered the winner's right. This is how the wars were traditionally ended during the slave-owing system and feudal epochs as well as during the time of capitalism. In a number of cases, annexation is considered to be some colonial seizure, and a kind of annexation – the creation of states with puppet regimes.

As history proves, annexation for Ukraine is a new concept comparing to other states (Manchu state, 1932 and others).

The concept of **"occupation"**. In academic interpretation it is determined: "Occupation is a temporarily seizure of a part or all territory of one state by armed forces of another one"[9].

In the "Dictionary of Foreign Words" the etymology of the word is traced from Latin occupatio – to conquer, seize and the following semes:

"1. It is a temporarily occupation by armed forces of a part or the whole territory of one state by another state, mainly as a result of offensive hostilities; occupation, enslavement.

2. In the Ancient Rome: seizure of things having no owner, including land plots"[10].

According to international law norms, occupation regime, not taking into account its immanent unlawful nature, is governed by several conventions: 4th Hague Convention (1907); Geneva Convention for the

[8] Короткий термінологічний словник. URL: https://pidruchniki.com/11800408/istoriya/politichna_istoriya_ukrayini_slovnik

[9] Словник української мови. Академічний тлумачний словник (1970-1980). URL: http://sum.in.ua/s/okupacija.

[10] Словник іншомовних слів. URL: http://slovopedia.org.ua/36/53406/244881.html.

Protection of Civilian Persons in Time of War (1949); The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954).

The annexation and military occupation are not legal grounds for changing the state territory. No territorial changes, made by annexation or military occupation, can be legally enshrined. Therefore, it is prohibited to include occupied territories in the occupier state in accordance with international law norms.

Military occupation, in contrast to the annexation, does not create legal grounds for changing the state territory – affiliation (title) of the territory, moreover, regardless of the occupation duration.

Since the occupying power at the occupied territory establishes its own law order, international law imposes an obligation on the occupier state concerning the state which it occupies. The occupier state, as S. Poltavets emphasizes, "has the right to levy taxes on the occupied territory, to demand that the population obey its established norms and laws. At the same time, the occupying power is deprived of the right to force citizens residing at the territories seized by it to assist it (the occupying power) in carrying out military operations against their homeland.

Basic human and civil rights, including the right to property, private and personal rights, should be ensured at the occupied territory. International law norms provide for the right of citizens to remain loyal to their state. At the same time, the occupier has the right to increase criminal liability and introduce certain norms into criminal legislation at captured territories, providing for the reinforcement of punishment for violating the safety of its military formations or property. Non-compliance with international law norms by the occupier state leads to political, moral and material sanctions for crimes that are particularly dangerous, including the criminal liability of specific officials or ordinary citizens. Such liability may arise due to violation of laws and customs of war and for crimes against peace, humanity, human safety and international law order by the occupier state or its representatives"[11].

The concept of "hybrid war" In Ukrainian jurisprudence, a "hybrid war" is rather new concept, and not enough studied. It has been

[11] Полтавець С. Окупація земель суверенної держави: уроки політичної історії. URL: http://nbuviap.gov.ua/index.php?option=com_content&view=article&id=972:okupatsiya-zemel-suverennoji-derzhavi&catid=8&Itemid=350.

introduced into an active discourse in recent years, in connection with Russian aggression. Ukraine faced the challenge of defending state sovereignty and borders under the conditions of hybrid war having other means than, for example, the World War II. Therefore, one should rethink the war phenomenon, its course and consequences, react quickly, and develop radically new approaches. It should be noted that in the modern war, the use of information and communication technologies, highly skilled human resources, the art of international politics, the re-equipment of economy etc. has been of great significance.

A hybrid war is a complex and inert process, it is not always manageable, it can not be stopped "by the order from the top". Unlike the traditional wars of the past, it does not end with the signing of a truce agreement.

The field of application of hybrid war tools does not have well-established "battle lines" – it is too broad: population of the conflict zone; rear population; international community.

The hybrid war is still called asymmetric, taking into account that rivals may not be equal in it, but this does not mean that someone who has more resources will win. O. Kurban notes: "... During a hybrid war, the resources and nature of actions of rivals may differ from each other. The main goal is compensate a lack of resources and capabilities through a certain concentration of one of the parties or to gain significant advantage in a particular direction within the conflict"[12]. In a view of this, when developing and implementing the state legal policy under the conditions of a hybrid war, it is necessary to look for new approaches to its definition, clarifying the nature, content and features of this phenomenon.

In our opinion, *a hybrid war is an organized struggle between states that has a specific creative nature: it is conducted through non-standard strategies and tactics, with the involvement of a set of political, military, economic, information, ideological tools and means.*

Practice shows that separatist ideas, views and actions are actively spreading under the hybrid war conditions. Proponents of separatism, pursuing their goals, can use both non-violent methods and armed struggle. Typical forms of non-violent actions are organization of referendums, propaganda campaigns, mass meetings, expanding of party

[12] Курбан О. В. Теорія інформаційної війни: базові основи, методологія та понятійний апарат. Scientific Journal «ScienceRise». 2015. № 11/1 (16). С. 95-100.

activities, public movements. The armed struggle can take the form of sabotage, terrorist acts, rebel and partisan actions, etc.

Opposition to separatist movements is connected with renovation of control over temporarily occupied territories, the regime of the state border by the state authorities, which is especially important under the conditions of armed confrontation. This allows blocking the channels of financial and material resources, staffing of militants, and influencing their command and control systems. The political and legal settlement of separatist conflicts should be based on the need to protect national interests, territorial integrity and inviolability of state borders, rights and legitimate interests of local population.

The Constitution of Ukraine clearly defines the concepts of "war" (Articles 85, 106) and "martial law" (Articles 41, 43, 64, 83, 85, 92, 106, and 157). The lawmaker describes the order of announcement of the state of war, martial law, the order of mobilization, forced alienation of property, public works in such conditions.

The concept of "hybrid occupation". Hybrid occupation, or effective control, is a new category in legal discourse, which means the newest form of control of foreign territories (temporarily occupied and annexed) with the minimum use of force methods.

In a modern political reality, even an aggressor-state, preferring to pursue an aggressive policy, must take care of its international image and seem to be civilized. Therefore, the aggressor-state resorted to use a more subtle form of occupation, namely, hybrid one. It is based on effective control, which, according to the official website of the Ministry for Temporary Occupied Territories and Internally Displaced Persons, provides:

"Conducting continuous military actions by non-state armed groups against government forces of one state, with the support of another state, without which the groups mentioned, could not carry out their activities. In particular, such support can be political, military, economic, financial, and social. Non-state armed groups can create "power bodies" with the support of another state cooperating with these "bodies" and may delegate their representatives to them"[13].

[13] Окупація та ефективний контроль: національне сприйняття та міжнародно-правові реалії. URL: https://mtot.gov.ua/okupatsiya-ta-efektyvnyj-kontrol-natsionalne-spryjnyattya-ta-mizhnarodno-pravovi-realiyi.

According to V. Gorbulin, a "hybrid occupier" aims to achieve political goals with minimal armed influence on the enemy. These approaches relate to the situation prevailing in certain districts of Donetsk and Luhansk regions, which are not under the control of Ukrainian authorities[14].

Russian occupation of the Crimean Peninsula: legal regime at the temporarily occupied territory of Ukraine. Occupation is not a new concept in the history of Ukraine. For example, in 1941-1944 was the period of Ukrainian lands under German rule after the retreat of Soviet troops. The occupiers carried out colonization policies, exploited the population, planned to incorporate the Ukrainian territory into the German Reich. This is classical military occupation, that is, a temporary seizure of the territory of a certain state by armed forces of another state, which often occurs during international armed conflicts.

In the 21st century Ukraine suffered from occupation again, namely, from the Russian Federation. We propose the following definitions of this phenomenon:

The occupation of the Autonomous Republic of Crimea and Sevastopol by Russia is, first of all, the armed aggression has committed by Russia since February 20, 2014, aimed at alienating the Crimea and Sevastopol autonomy from Ukraine and their annexation to their own territories as subjects of the Russian Federation; and secondly, keeping Ukrainian territories in the Russian Federation composition in a violent way and with systemic violations of international law.

The temporarily occupied territories include:

1) The land of the Autonomous Republic of Crimea and Sevastopol, internal waters of Ukraine of these territories;

2) Internal sea waters and the territorial sea of Ukraine around the Crimean Peninsula, the territory of the exclusive (maritime) economic zone of Ukraine along the coast of the Crimean Peninsula and the coastal continental shelf of Ukraine, which is subject to jurisdiction of Ukrainian state authorities in accordance with norms of international law, the Constitution and laws Ukraine;

[14] Горбулін В. Гібридна війна: все тільки починається ... *Дзеркало тижня*. 25.03.2016 р. № 11. URL: http://gazeta.dt.ua/internal/gibridna-viyna-vse-tilki– pochinayetsya-html.

3) Airspace over the territories specified in clause 1 and 2 of this part[15].

Ukraine as well as the UN General Assembly, the PACE, and the OSCE PA will not recognize the annexation of Crimea. In contrast, the Russian Federation speaks about "the return of the Crimea to Russia". In accordance with the Law of Ukraine "On ensuring the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine", the territory of the Crimean peninsula is a temporarily occupied territory.

On March 27, 2014, the General Assembly of the United Nations adopted a Resolution on the territorial integrity of Ukraine, which lists the international legal documents that the Russian Federation violated.

The UN General Assembly resolution disapproved the holding of a referendum at the Crimea and Sevastopol territory and made a conclusion that the referendum was unlawful. The resolution calls on international community not to recognize any changes in the Autonomous Republic of Crimea status.

Legal regime of occupied territory. The occupation of a certain territory by the aggressor-state does not terminate the legislation effect – all the legislative acts are in force at the occupied territory. Therefore, Ukrainian lawmakers and lawyers assign a high priority to such complex theoretical and practical problem as the regime at temporarily occupied territory of Ukraine, introduced in connection with Russian occupation.

The legal regime of the occupied territory in Ukraine is governed by the following normative legal acts, such as: the Constitution of Ukraine; the Criminal Procedural Code of Ukraine, the Code of Administrative Offences of Ukraine (Articles 202, 204); Laws of Ukraine "On ensuring the rights and freedoms of citizens and legal regime in the temporarily occupied territory of Ukraine"; "On border control"; the Criminal Code of Ukraine (Articles 332, 438), as well as the Order of the Cabinet of Ministers of Ukraine "On the temporary closure of checkpoints across the state border and control points", etc.

An important regulator of a legal regime at the temporarily occupied territory is the Constitution of Ukraine and implementation of constitutional and legal policy – a justified, systematic activity of the state

[15] Правовий режим окупованої території. URL: http://www.i-law.kiev.ua/правовий-режим-окупованої-території/

and territorial bodies and public associations with the aim of optimizing the constitutional development of these territories. The Constitution of Ukraine is the basic legal act, establishing basic principles of public life organization and strategic goals of state development. Constitutional legislation is implemented through constitutional and legal policies – such policy forms a legal system, it is the basis of it. In a hybrid war, the state must, first of all, provide the stability of legislation, including the Constitution, in order to prevent legal nihilism, people's disbelief in the state's ability to protect their rights and freedoms. Secondly, in view of relevant development of public relations, the state is obliged to adaptively respond and provide the development of legal policy.

After the Crimea annexation, the Law of Ukraine "On ensuring rights and freedoms and legal regime in the temporarily occupied territory of Ukraine" was adopted (came into force on April 15, 2014), aimed at legislative regulation of the situation. Article 1 of this document states: "... The temporarily occupied territory of Ukraine is an integral part of the territory of Ukraine, which is subject to the Constitution and laws of Ukraine. It provided with the first conceptual answers to the challenges, numerous specific issues that the Crimeans and authorities have faced: Ukrainian citizenship preservation, wealth, bank savings, document circulation, blocked pensions, access to education, etc. The main thesis of the Law is that "the compulsory automatic acquisition of citizenship of the Russian Federation by Ukrainian citizens, residing at the temporarily occupied territory, is not recognized by Ukraine and is not a ground for the loss of citizenship of Ukraine". So, despite the fact that the Crimeans acquired the citizenship of the aggressor-state automatically and by force at the territory of the annexed peninsula, Ukraine does not recognize this, and the Crimeans are Ukrainian citizens for Ukraine.

As a result of territory definition of the Autonomous Republic of Crimea as occupied, all newly created state bodies and local self-government bodies there, as well as all acts issued by them, are not recognized in Ukraine. For that reason, the Crimean citizen who received a document there during occupation (passport, driving license, birth certificate or marriage, etc.) can not use it at the territory of Ukraine.

The Law contains provisions on ensuring the exercise of social rights of citizens. There are provisions on social protection, however, this part of the law is rather declarative, than suitable for practical application.

Considering the Law of Ukraine "On ensuring the rights and freedoms of citizens in the temporarily occupied territory of Ukraine", S. Humphries, professor of London School of Economics noted: "The territory is considered occupied when it is under the direct control of enemy army. Such formulation is given in the Hague Convention of 1907". At the same time, a scholar believes that the "law on occupation" does not have any status in international law, except the fact that the state "thinks so", which has adopted such a law ... Both Georgian and Ukrainian law can not "create" occupation, or "announce" about it. They (these laws) can only draw the attention of international community to what is happening"[16].

2. International Cooperation in the Field of Protection of Human Rights and Freedoms at the Temporarily Occupied Territory

The fact of hybrid occupation over the temporarily occupied Ukrainian territories by the RF is recognized by international community. In case of granting the relevant status to these territories by national law, this fact can not be disputed under international law.

Ukraine, having suffered from a hybrid war and protecting European values under such difficult conditions, is interested in expanding international cooperation.

Costas Paraskeva writes as follows on importance of such cooperation: "In order to prevent the emergence of preconditions for forced displacement of people, protection and observance of rights and freedoms of IDPs, in order to create and maintain conditions that allow such persons voluntarily, under safe conditions and with dignity to return to the abandoned place of residence, as well as conditions for the integration of IDPs into a new place of residence in Ukraine, Ukrainian cooperation with other states and international organizations is of great importance.

The Council of Europe makes a great contribution to IDPs' protection through setting of standards, monitoring and cooperation applicable to 47 member states in Europe."[17].

[16] Полтавець С. Окупація земель суверенної держави: уроки політичної історії. URL: http://nbuviap.gov.ua/index.php?option=com_content&view=article&id=972:okupatsiya-zemel-suverennoji-derzhavi&catid=8&Itemid=350.

[17] Paraskeva Costas. Protecting internally displaced persons under the European convention on human rights and other Council of Europe standards: a handb. Харків: Pravo, 2017. 130 p.

The Parliamentary Assembly adopted a number of resolutions on the Ukrainian issue: 2133 (2016) “Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities”; 2132 (2016) “Political consequences of the Russian aggression in Ukraine”; 2198 (2018), as well as Recommendation 2119 (2018) “Humanitarian consequences of the war in Ukraine related to military actions in Ukraine”.

International cooperation during hybrid war, being implemented on the basis of European human rights standards, enshrined, in particular, in the following documents of the Council of Europe, the EU: the European Convention for the Protection of Human Rights and Fundamental Freedoms; European Social Charter; European Union Charter on Fundamental Rights.

These documents clearly articulated indicators and criteria for the content and scope of relevant rights, which is the guideline or duty of the state.

Today, the EU institutions in cooperation with Ukraine are actively appealing to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in which they see an effective legal instrument. The ECHR reflects the most important human rights and freedoms: the obligation to respect human rights, the right to life, the prohibition of torture, the prohibition of slavery and forced labor, the right to freedom and personal inviolability, the right to a fair trial, the right to respect for private and family life, freedom of thought, conscience and religion, etc. – as the Council of Europe understands them[18].

The European Social Charter[19] articulates not less important values and principles by complementing the Convention and creating a holistic range of internationally recognized human rights standards with it.

More local and substantive human rights activities carried out by the UNESCO international organization. It develops and advocates cultural rights: to education, the use of scientific achievements, unimpeded participation in cultural life, and so on. In this case, the organization develops recommendations establishing and guaranteeing human cultural rights and freedoms.

[18] Європейська конвенція з прав людини. URL: https://www.echr.coe.int/Documents/Convention_UKR.pdf.

[19] Європейська соціальна хартія (переглянута). від 14.09.2006 р. № 137-V. Дата оновлення: 07.09.2016 р. URL: https://zakon.rada.gov.ua/laws/show/994_062.

On November 25, 2015, an international conference "Moldova, Georgia, Ukraine: the Issue of Occupied Territories and Frozen Conflicts" was held in Kyiv. The event was about the emergence of a new reality, triggered by terrorist acts in Europe, the war in the Middle East, and most of all – the annexation of the Crimea and military aggression of Russia in Donbas.

In this context, the so-called "frozen conflicts" require rethinking. The event participants came to the conclusion that the situation requires coordination of actions of Ukraine, Georgia and Moldova, which are experiencing the same problems and have a common source of these problems, namely, aggression of the Russian Federation. Practice shows that each of these three countries is not able to stand alone against Russia, which deliberately transforms all occupied territories into "gray zones". To that end, the efforts should be united at the level of governments, human rights activists, and people of Ukraine, Moldova and Georgia. Moreover, the initiative should come from public circles. Under current political conditions, Ukraine, Moldova and Georgia should, by cooperating, create an evidence base for Russian engagement in exasperating of conflicts and deliberately blocking the resolution of these conflicts.

Delaying the resolution of socio-economic, political-legal, and military-political conflicts in the temporarily occupied territories of Ukraine is disastrous for both the state and citizens.

This is also confirmed by international judicial practice, in particular, the practice of the European Court of Human Rights, for example, the Resolutions of June 16, 2015 of the ECHR in the case of "Chiragov and others v. Armenia", «Ilascu and others v. Moldova and Russia."

In the case of "Chiragov and others v. Armenia" the issue which of the states – Armenia or Azerbaijan – is responsible for observance of human rights at the territory of so-called "Nagorno-Karabakh Republic" ("NKR") was being resolved. Considering this case, the representatives of Armenia adhered to the principle of "we are not there". In this regard, the ECHR had to admit: "... It is strange to perceive the statements of representatives of the Republic of Armenia, which, apparently, contradict to the official position that the Armenian Armed Forces are not located in "NKR" or at the adjacent territories." The court indicated that, it establishes based on numerous reports and statements, that the Republic of Armenia, as a result of its military presence and provision of military equipment and specialist knowledge, has been significantly involved in

the Nagorno-Karabakh conflict from the beginning. Thus, as a result of consideration of this case, the ECHR has in fact recognized the occupation of part of the Azerbaijan territory ("NKR") by Armenia, hence, the responsibility of Armenia for the observance of human rights at this territory. In the ECHR Decision it was about: "Article 42 of The Convention respecting the laws and customs of war on land (Hague Convention of 1907) determines military occupation as follows: Territory is considered occupied when it is actually placed under the authority of the hostile army… The requirement of actual authority is widely recognized as a synonym of effective control"[20].

Relevant legal positions were also found in the ECHR decision in the case of "Ilascu and others v. Moldova and Russia", dealing with violations of human rights in Transnistria and actions of a "hybrid occupier". The ECHR emphasized: although the international legal understanding of the term "within the jurisdiction" is associated with a territory of the state, jurisdiction may also be exercised outside the territory of the state. There can be exceptions when the state does not fully exercise power over a part of its territory, in particular as a result of armed occupation by another state that controls that territory (clause 312). State responsibility can take place in the course of military actions (lawful and unlawful), if in practice the state exercises effective control outside the national territory. The obligation to ensure the human rights and freedoms at this territory follows from the fact of such control through the presence of armed forces or management bodies at this territory. When a state exercises control outside its national territory, its liability is not limited to the actions of soldiers and officers, and is related to the actions of local administration. The state can be liable, even if its agents act contrary to its instructions (clauses 316, 319). The Moldavian government (under international law, the only legitimate government of the Republic of Moldova) did not exercise power over a part of its territory that was under the control of the Republic of Transnistria (clause 330). From the point of view of the ECHR, Moldova had too little chance to establish control over Transnistria, taking into account that the regime was supported by the Russian Federation by political, economic and military means (clause 341 of the Decision). Liability of the RF arises in connection with illegal

[20] Чирагов и другие против Армении: Постановление ЕСПЧ от 16.06.2015 г. (жалоба № 13216/05). URL: http://zakoniros.ru/?p=22677.

actions of the Transnistrian separatists, in view of the support of these actions by the RF (clause 382)[21].

It appears from the European Court of Human Rights practice: occupation regimes, having various names ("effective control", temporarily occupation etc.), are almost the same in fact. And liability concerning seized territories in accordance with international legal standards, national legislation, is born by an occupier-state.

Therefore, the institution of liability must be, firstly, thoroughly regulated, and secondly, a functional tool suitable for overcoming the consequences of the hybrid war and occupation, compensation of damage by an occupier-state, and thirdly, a highly effective factor of influence in order to prevent similar acts in the future.

Thus, the concepts of "annexation" and "occupation" are not absolutely the same.

A state establishes a specific legal regime both on occupied and annexed territories. At the same time, an aggrieved state, protecting its territory and people, has the right to use all available international legal means.

Today, a legal regime of occupied territories is enshrined in national legislation in Ukraine. However, there are complex problems: determination of legal regime of annexed territories, legal regulation of issue on legal status of territories in the area of anti-terrorist operations.

CONCLUSIONS

Legal policy of the state at temporarily occupied territories under the conditions of a hybrid war is a type of legal policy, and the latter is an independent type of the state policy.

Legal policy at temporarily occupied territories under the conditions of a hybrid war, has its own types: 1) by different fields of right exercise: legal, punitive-corrective, executive, judicial, notarial, prosecutorial etc.; 2) by law branch: constitutional-legal; criminal-legal; civil-legal; administrative-legal etc.; 3) by law structure in the field: private; public; material; procedural; regulatory; protective; 4) by fields of society: economics; politics; culture: 5) by territorial feature: nation-wide; local; 6) by elements of legal system: law-making; law-exercising; law-educating; 7) depending on the aim of exercise: current and prospective.

[21] Илашку и другие против Молдовы и России: Решение ЕСПЧ от 08.07.2004 г. (жалоба № 48787/99. URL: http://sutyajnik.ru/rus/echr/judgments/ilascu_rus.htm.

The principles of the state legal policy at the temporarily occupied territories under the conditions of a hybrid war include the following: the priority of human rights; legality; social conditionality; scientific justification; firmness and predictability; legitimacy; morality; justice; publicity; unification of interests of a person and the state; compliance with international standards; objectivity; adequacy; optimality; reasonability; systematic nature; purposefulness; sequence; resource provision; humanistic orientation and democratic character of the toolkit.

The state legal policy at the temporarily occupied territories in a hybrid war is a part of the state policy that is justified and consistent activity of state authorities and local self-government bodies in order to provide an effective mechanism for the legal regulation of public relations at temporarily occupied territories under the conditions of a hybrid war and it is expressed in a set of ideas, activities, tasks, programs, guidelines implemented in the field of law and through the law and based on the fundamental legal principles.

The components of the state legal policy at temporarily occupied territories under the conditions of a hybrid war are not stable. The structure is not clear, and the list can not be considered as complete. After all, public relations are changing all the time, and therefore the structure of legal policy itself can change, adapting to the requirements of civil society. During the hybrid war, the state further strengthens the law order, using, as a rule, coercion. Therefore, the priority of law order and national safety can be a sign of legal policy. The subjects of the state legal policy regarding temporarily occupied territories during a hybrid war can be considered: 1) the state, carrying out its functions in exercise of legal policy through certain bodies and institutions directly; 2) political parties; 3) citizens (civil society). Sometimes foreign states and states-participants in the hybrid war can also be the subjects.

Despite the different names (temporary occupation, “effective control”, etc.), the ECHR practice proves that such regimes are actually the same, but the liability for acts committed against these territories is borne by a state-occupier in accordance with existing international legal standards, legitimate national legislation.

It is the institution of liability that should be not only properly regulated but also a truly functioning, effective tool for overcoming the negative consequences arising from the completion of a hybrid war and hybrid occupation, reimbursement of damage by guilty parties, and in order to prevent similar actions in the future.

The concepts of “annexation” and “occupation” are not identical. Both during occupation and annexation, a special legal regime of occupied or annexed territories is introduced in the state. During occupation or annexation the aggrieved state has the right to use all legal international means to protect its territory and citizens.

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SOCIAL CONDITIONALITY OF CRIMINAL LIABILITY OF CRIMES AGAINST PERSON'S HEALTH

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INTRODUCTION

Development of Ukraine as sovereign, independent, democratic, social and law-governed state requires regulation of certain public relations through the prism of law. It is the adoption of criminal-legal norms that is the evidence of the fact that the state, from the point of view of social necessity, makes decisions to impose some socially dangerous bans. The first step (stage) of criminal-legal norm "birth" is its conditionality, namely, factors being the recondition of further criminalization of one or another action, resulted in appropriate consolidation of the norm in regulatory legal act such as the Criminal Code of Ukraine.

Legal imposition of new criminal-legal bans has to be reasonable, scientifically justified and meets the needs of society development[1]. A mechanism of social conditionality of law includes the following stages:

– Emergence of the necessity to regulate certain relations legally;

– Public opinion formation and the activity of state competent authority on legal norm adoption – law-making activity. That is why "… one should understand under the social conditionality of law the compliance, adequacy of law to public relations regulated, its ability to reflect objective needs of public life. The property of social conditionality of law is expressed in the fact that, first of all, the law should be a dynamic system, reacting tactfully to the changes in social reality"[2]. For example, M. J. Korzhansky stated that "social conditionality of criminal-legal protection is determined, in general, by social worth of public relations, economic factors and by the efficiency of legal protection" [3].

[1] Теорія держави і права. Академічний курс: підручник / за ред. О. В. Зайчука, Н. М. Оніщенко. 2 вид., перероб. і допов. Київ: Юрінком Інтер, 2008. 688 с. URL: http://www.ebk.net.ua/Book/law/zaychuk_tdp/part2/401.htm.

[2] Соціологія: підручник / Н. П. Осипова, В. Д. Воднік, Г. П. Клімова та ін.; за ред. Н. П. Осипової. Київ: Юрінком Інтер, 2003. 336 с. URL: http://radnuk.info/pidrychnuku/sotsiologiya/507-osupova/10927-s-2html/

[3] Коржанский Н. Й. Установление вины. *Юрид. практика*. 1997. № 3 (37). Февраль. С. 5–6.

A lawmaker should possess information about a status, structure and dynamics of law offences and crimes, damages caused by them as well as other information necessary to solve the issue on criminalization of socially dangerous deeds [4]. That is why the next stage is "criminalization" of deed "… the determination of deed as a socially dangerous, guilty and punishable in the law on criminal liability"[5]; "the declaration of certain socially dangerous deeds as a crime"[6]; "legal determination of one or another type of actions (inaction) as a crime"[7]; "their attribution to crimes"[8]; "legal recognition of one or another deed as crimes, imposition of criminal liability for them" [9]; the field of criminal policy which is in detection of socially dangerous forms of individual behavior, recognition of permissibility, ability and reasonableness of their criminal-legal ban by their consolidation in law as criminal and criminal-punishable [10]. The analysis of scientific works proves that the determination of "criminalization" concept has not been changed over the years. The most successful interpretation was given by P.L. Fris, namely "criminalization is the process of detection of socially dangerous types of human behavior, recognition of the necessity, ability and reasonableness of criminal-legal fighting with them at the state level, and in case of positive response to these issues, their consolidation in law as crimes[11.]

V. M. Kudriavtsev states that the final stage of criminalization is the criminalization result, namely, a set of criminal law norms contained the list of crimes and punishment provided for them, as well as grounds and conditions for bringing to criminal liability of those guilty or released

[4] Кузнецов А. В. Научная основа и информационная база советской уголовной политики. *Вопросы совершенствования уголовно-правового регулирования*: межвуз. сб. науч. тр. Свердловск: Изд-во СЮИ, 1988. С. 8–9.

[5] Эффективность уголовно-правовых мер борьбы с преступностью / под ред. Б. С. Никифорова. М.: Юрид. лит., 1968. 256 с.

[6] Дагель П. С. Уголовная политика: управление борьбой с преступностью. *Проблемы социологии уголовного права*. М., 1984. С. 37–43.

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[11] Фріс П. Л. Кримінально-правова політика України: дис. ... д-ра юрид. наук. Київ, 2005. 331 с.

from it"[12]. In our opinion, the distinction of the "criminalization result" as an independent stage has no sense since "the consequence" of criminalization is the consolidation of socially dangerous deed in the CC of Ukraine.

1. Terminology and the System of Factors of Social Conditionality of Criminal Liability

The terminology of "social conditionality of criminal liability" is traditional in national doctrine of criminal law. However, a different system and terminology of social conditionality of legal norms are used. Some scholars think that these are causes[13], other – means[14], grounds[15], criteria[16], principles[17], as well as factors[18]. Using terminology for establishment of social conditionality of criminal liability it is necessary to take into account that the term "criterion" is more common for subject's evaluative activity and it is used as a measure of evaluation; the term "condition" has criminological orientation at studying criminality determinants; the term "ground" is the basic, anything can be based on it, or something by which deeds, behavior etc. is explained"[19]; the term "means" in the theory of criminal law is used as optional feature of objective side of the crime composition, these are "subjects, documents, substances, by use of which the conditions for crime are created"[20]. Thus, sharing V. I. Osadchy's opinion we use the term "factors" to stipulate the social conditionality of crimes against person's health.

[12] Кудрявцев В. Н. Основания уголовно-правового запрета: криминализация и декриминализация. М.: Наука, 1982. 304 с.

[13] Гороховська О. В. Кримінальна відповідальність за вбивство через необережність: автореф. дис. ... канд. юрид. наук. Київ, 2003. 18 с.

[14] Орлеан А. М. Соціальна обумовленість криміналізації та кримінально-правова характеристика торгівлі людьми: автореф. дис. ... канд. юрид. наук. Харків, 2003. 20 с.

[15] Кириченко Ю. В. Кримінальна відповідальність за викрадення електричної або теплової енергії: автореф. дис. ... канд. юрид. наук. Дніпропетровськ, 2009. 20 с.

[16] Миколенко О. М. Теоретичні основи дослідження шкоди, заподіяної злочином: автореф. дис. …канд.. юрид. наук. Харків, 2005. 19 с.

[17] Омельчук О. М. Контрабанда за кримінальним правом України: автореф. дис. ... канд. юрид. наук. Київ, 2002. 20 с.

[18] Осадчий В. І. Проблеми кримінально-правового захисту правоохоронної діяльності: автореф. дис. ... д-ра юрид. наук. Київ, 2004. 36 с.; Доляновська І. М. Кримінальна відповідальність за експлуатацію дітей (аналіз складу злочину): автореф. дис. ... канд. юрид. наук. Київ, 2008. 18 с.; Міщук І. П. Кримінально-правова охорона життя та здоров'я захисника чи представника особи: автореф. дис. … канд. юрид. наук. Київ, 2012. 20 с.

[19] Новий тлумачний словник української мови: у 4 т. / укл. В. В. Яременко, О. М. Сліпушко. Т. 1. Київ: Аконіт, 2000. 910 с.

[20] Науково-практичний коментар Кримінального кодексу України / за ред. М. І. Мельника, М. І. Хавронюка. 9-те вид., переробл. та доповн. Київ: Юридична думка, 2012. 1316 с.

As the result of analysis of scientific achievements it is possible to make a conclusion that at present an active research is being carried out on the problem of social conditionality of criminal liability. In particular, such system of factors is distinguished:

1) Criminological, regulatory, social-economic, international and historical[21];

2) Criminal-legal, criminological, regulatory, historical, international, procedural and criminalistic, organizational, socio-psychological[22];

3) Socio-economic; medical, regulatory, criminological[23];

4) Historical; regulatory-legal; international-legal; criminological[24];

5) General social, specific-criminological, criminal-legal[25];

6) Social, socio-economic, systematic-legal[26];

7) Criminological, international, historical, regulatory-legal[27];

8) Historical, criminological, regulatory-legal, international, socio-psychological[28];

9) Criminological, historical, regulatory socio-psychological, international[29].

As results of the comparison of the studies mentioned have shown, the authors studying the social conditionality do not follow certain rules, namely: some of them study historical or international factors, others do not do that. There is no a single system and terminology, namely: the scholars use international and international-legal factors as synonymic ones.

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[21] Белова О. І. Кримінально-правова характеристика системи злочинів проти сім'ї та неповнолітніх: автореф. дис. ... канд. юрид. наук. Київ, 2007. 19 с.

[22] Гороховська О. В. Кримінальна відповідальність за вбивство через необережність: автореф. дис. ... канд. юрид. наук. Київ, 2003. 18 с.

[23] Гринчак С. В. Порушення встановленого законом порядку трансплантації органів або тканин людини: підстави кримінальної відповідальності: автореф. дис. ... канд. юрид. наук. Харків, 2007. 20 с.

[24] Копотун І. М. Громадський порядок як об'єкт кримінально-правової охорони: автореф. дис. ... канд. юрид. наук. Київ, 2008. 20 с.

[25] Литвин О. П. Кримінально-правова охорона громадської безпеки і народного здоров'я: автореф. дис. ... д-ра юрид. наук. Київ, 1999. 46 с.

[26] Омельчук О. М. Контрабанда за кримінальним правом України: автореф. дис. ... канд. юрид. наук. Київ, 2002. 20 с.

[27] Осадчий В. І. Проблеми кримінально-правового захисту правоохоронної діяльності: автореф. дис. ... д-ра юрид. наук. Київ, 2004. 36 с.

[28] Швидченко І. Г. Свобода віросповідання як об'єкт кримінально-правової охорони: автореф. дис. ... канд. юрид. наук. Київ, 2009. 19 с.

[29] Міщук І. П. Кримінально-правова охорона життя та здоров'я захисника чи представника особи: автореф. дис. … канд. юрид. наук. Київ, 2012. 20 с.

2. Groups of Factors of Social Conditionality of Criminal Liability for Crimes against Person's Health

Studying the issues on social conditionality of criminal liability for crimes against person's health (Articles 121 – 128, 130, 133 of CC of Ukraine), we should pay attention on:

1) General factors defining the social conditionality of criminal liability for crimes against person's health, to which we attribute: general social, medical, and socio-economic;

2) Legal factors, arising from legal acts directly – these are historic-legal, internal-legal and regulatory;

3) Criminal-sectoral factors – criminal-legal and criminological.

The analysis of these factors, in our opinion, is sufficient for determination of social conditionality of criminal liability for crimes against person's health.

2.1. General Factors of Social Conditionality of Criminal Liability for Crimes against Person's Health

General social factors justify public necessity and political reasonableness of determination of criminal liability for crimes against person's health.

Changes taking place in political, economic and social domains of our state determine the studying of the issue on formation, improvement of law in the field of person's health protection. Unstable society conditions in the field of economics cause violation of human constitutional rights and freedoms, including infringement of person's health. Political and social domains in Ukraine, intensification of global economic crisis facilitate dissemination of crimes not only at the territory of our state but outside its boundaries too. In addition to political, social factors, health protection is influenced by religion and morality belonging to general social factors.

Some religions in the written sources determine certain bans–commandments. Studying this issue it has been defined that these "bans" is established in basic world religions and religion movements: Orthodoxy, Buddhism, Judaism; the provision of Islam do not provide for it[30]. Thus, for example, Biblical commandments mention "do not

[30] Ідейні джерела ісламу. URL: http://www.info-works.com.ua/all/religia/3983.html

kill"[31], "do not do harm to any living thing" (Buddhism)[32], Judaism supports the same position[33]. According to Biblical commandment, life and health are interconnected categories which are complementary to each other; this is unconditional indisputable fact. Buddhism has a kind of other taboo, the essence of which is in ban to infringe not only on person's life and health but also on anything (animals etc.). "Definitely, law enforcement as an official activity of state authorities carrying out "here and now", within the limits of actual existing political system, can not in any case ignore such morality that is officially declared by dominating public groups"[34].

Both nature of social consciousness and state of public opinion depend on moral principles of society. So, social, economic, political processes in society, low level of moral culture and increase in number of religion groups of aggressive purpose influences the grounds and conditions of infringements on person's health and other crime deeds.

Medical factors play special role as well, determining socially the criminal liability for crimes against person's health in a high degree, including physical injury (Articles 121–125), blows and torments (Article 126), tortures (Article 127) etc. Consequences caused by such crimes influence the qualification of deeds of a guilty person. To determine the type of physical injury it is necessary to have special knowledge in the field of forensic medicine. So, such issues of legal and medical nature is described in the Regulations on forensic medicinal determination of the severity degree of physical injuries, the Procedure on organization and carrying out medical social expertise of working capacity loss, the Regulations on carrying out forensic medical expertise (examination) on sexual conditions in bureau of forensic medical expertise, the Criteria of determination of lasting working capacity in percents, the peculiarities of employment of ill and disable people, the Instruction on group of disability determination etc.

Thus, social necessity determines the reasonableness for maintaining criminal liability for crimes committed by a guilty person. The right idea

[31] Базалук О. О., Юхименко Н. Ф. Філософія освіти: навч.-метод. посіб. Київ: Кондор, 2010. 164 с. URL: http://pidruchniki.ws/12090810/filosofiya/zolote_pravilo_morali_yogo_vpliv_rozvitok_filosofiyi_osviti.

[32] Кислюк К. В., Кучер О. М. Релігієзнавство: підручник. 5 вид., виправ. і доп. Київ, 2009. 636 с. URL: http://pidruchniki.ws/17670921/religiyeznavstvo/religiyniy_kult_religiyna_organizatsiya_buddizmu.

[33] Вікіпедія. Вільна енциклопедія. URL: http://ru.wikipedia.org/.

[34] Рабінович С. Суспільна мораль як предмет етики й юриспруденції. *Право України*. 2011. № 8. С. 173–179. URL: http://www.info-pressa.com/article-1201.html.

is that “a crime for some people is the provision of high social and material status, and for others – survival, protection of own rights and interests, and for some people – a protest”[35]. That is why the presence of norms in the CC of Ukraine providing criminal liability for crimes against person’s health, is determined by a medical cause too.

In the case of causing severe physical injury, the person is done certain harm – loss of any organ or its functions, mental illness or other health disorder, combined with a lasting loss of working capacity on at least one third, or abortion or irrecoverable mutilation of face. Therefore, a person loses or may lose the possibility of social activity in society as a personality in full meaning. This may be a precondition for the loss of the main place of work and, consequently, loss of wages; changes in family status, etc. In such case, the state is obliged to provide financial support to these persons or persons taking care of them. “Financial provision of measures for the social protection of disabled people and children with disabilities is carried out at the expense of the state budget, including the Social Protection Fund for Disabled Persons, local budgets, as well as local self-government bodies by local social protection programs for certain categories of people at the expense of local budgets (Article 10). Material, social household and medical care of disabled persons are carried out in the form of cash payments (pensions, benefits, single payments), provision of medicines, technical and other means, including printed publications with a special font, sound amplifiers and analyzers, as well as by providing services on medical, social, labor and professional rehabilitation, household and commercial services (Article 36).” The provisions of the Law of Ukraine “On the Fundamentals of Social Protection of the Disabled persons in Ukraine” are in line with the provisions of the Convention on the Rights of Disabled Persons, which states that “States-members undertake to ensure and promote the full exercise of all human rights and fundamental freedoms by all disabled persons without discrimination regardless any kind of disability”. That is why we can also distinguish *socio-economic factors*, along with the medical cause on this example.

[35] Джужа О. М., Кирилюк А. В. Кримінологічна експертиза як засіб удосконалення законотворчого процесу. *Боротьба з організованою злочинністю і корупцією (теорія і практика)*. 2003. № 8. URL: http://mndc.nainau.kiev.ua/Gurnal/8text /g8_16.htm.

2.2. Legislative Factors of Social Conditionality of Criminal Liability for Crimes against Person's Health

Historical and legal factors arise from studies of the development of national legislation on criminal liability for crimes against person's health. The formation of Ukrainian criminal law from the beginning of the 20th century was accompanied by the adoption of codified acts on criminal liability, in particular the Criminal Code of the USSR in 1922, 1927, the USSR in 1960 and of Ukraine in 2001.

Taking into account the comparative legal characteristics of these codes, it is possible to further formulate the relevant theoretical suggestions for improving the criminal legislation of Ukraine. Therefore, in the current Criminal Code of Ukraine, comparing to previous national Criminal Codes, the level of health protection of a person has been significantly increased, new socially dangerous deeds have been criminalized, and some features of physical injury have been specified.

Adoption of criminal legal norms proves that the state, for reasons of social necessity, makes decisions on the establishment of certain socially dangerous bans. Therefore, the conditionality of criminal liability is the inclusion of a certain norm in the Criminal Code of Ukraine aimed at protecting public relations from crimes. One of these preconditions is the *international legal factors*, namely: country's obligation to implement international norms and standards ratified by Ukraine in national legislation, having taking liabilities for their observance.

Person's life and health require mandatory protection not only at the national level, but also at the international one. That is why the Constitution of Ukraine stipulates one of the most important provisions in Article 9: "The current international treaties, the consent of which is given by the Verkhovna Rada of Ukraine, is a part of Ukrainian national legislation. The conclusion of international treaties contradicting the Constitution of Ukraine may only be made only after the introduction of appropriate amendments to the Constitution of Ukraine. For the recognition of an international document as internal legislation of Ukraine, the consent of Verkhovna Rada of Ukraine is required. So, Article 9 of the Law of Ukraine "On International Treaties of Ukraine" states about ratification of international treaties by the Verkhovna Rada of Ukraine. In accordance with this Law (Clause b of Part 2, Article 9), international treaties of Ukraine, related to the rights and freedoms and

duties of a person and a citizen, shall be ratified. In connection with it, there are some international acts in Ukraine aimed at the protection of person's health from unlawful infringements.

International legal factors were also one of the preconditions for criminal liability for any inequality among people. So, for the fulfillment of its international obligations, the Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Liability for Crimes Against Racial, National or Religious Intolerance" as of November 5, 2009 was amended with the disposition of articles providing for criminal liability for crimes against person's health, in particular: Article 121, Article 122, Article 126 and Article 127 of the Criminal Code of Ukraine – "on motives of racial, national or religious intolerance."

So, as the results of international legislation analysis have shown, Ukraine, in general, has provided for criminal-legal norms aimed at person's health protection and they meet European and world standards in this field.

After the proclamation of independence in 1991, Ukraine took a path of democratic society development based on the principles of the supremacy of law and respect for human rights. Conditions are being created for effective legal protection of human rights and fundamental freedoms, as well as guarantees for their full and practical implementation. One of these conditions was the creation and adjustment of national legislation to international legal acts ratified by Ukraine. That is why the state policy was aimed at the adoption of new laws as a *regulatory factor* of criminal liability for committing crimes against person's health. Under the regulatory factor providing legal protection of person's health, the system of national legal norms regulating public relations in the field of person's health protection is recognized.

In our point of view, it is necessary to distinguish regulatory factors from international ones, since the international legal factor is the basis for determining the social conditionality of criminal liability for crimes against person's health in accordance with the provisions of a wide range of legal international acts. Regulatory factors are determined by a system of normative acts adopted and in force at the territory of Ukraine in accordance with the provisions of the Constitution and current international legal acts, but are determined by us as an independent factor.

"The process of emergence of new laws (including criminal ones) has cognition of objective patterns of social development, studying the needs of life, practices as its precondition"[36]. Today, there is a wide range of laws governing and protecting public relations in the field of person's health protection.

2.3. Criminal-Sectoral Factors Socially Determining the Criminal Liability for Crimes against Person's Health

Criminal law factors The peculiarity of criminal legal norm adoption and its subsequent effectiveness, first of all, depends on its scientific justification and its compliance with the interests of society and the state. For this very reason the study of conditionality of criminal-legal protection of person's health is significant as providing the interests of society, which subsequently finds implementation in the law. "The process of legal norm genesis can be conditionally represented as follows: public relations – living conditions – needs – interests – goals – the will of a lawmaker – the norm"[37].

We suggest distinguishing these factors from criminological ones because studying the criminal legal factors it is necessary to analyze criminal-legal categories, namely, such categories that are typical of the criminal law itself, but not criminology.

Some scholars call the following criminal-legal factors: "a) the degree of social danger of deeds; b) the presence of features, which allow determining the homogeneity of criminal deeds; c) the possibility of influencing the deeds by criminal-legal measures; d) implementation of international criminal legal norms in the national legislation"[38] . Others: "the degree of social danger of the deed", "the state of normative legal regulation", «the possibility of influence on the actions by criminal-legal measures" заходами»[39]; "Negative consequences (social price), in which

[36] Пащенко О. О. Щодо соціальної обумовленості закону про кримінальну відповідальність: постановка проблеми. *Теоретичні та прикладні проблеми сучасного кримінального права*: матеріали II міжнар. наук.-практ. конф. (м. Луганськ, 19–20 квіт. 2012 р.) / упоряд.: Є. О. Письменський, Ю. Г. Старовойтова. Луганськ: РВВ ЛДУВС ім. Е. О. Дідоренка, 2012. С. 402.

[37] Грищук В. К. Проблеми кодифікації кримінального законодавства України: монографія. Львів: Львів. ун-т, 1993. 173 с.

[38] Гороховська О. В. Кримінальна відповідальність за вбивство через необережність: автореф. дис. ... канд. юрид. наук. Київ, 2003. 18 с.

[39] Слуцька Т. І. Кримінальна відповідальність за перевищення влади або службових повноважень: дис. ... канд. юрид. наук. Київ, 2010. 232 с.

its social danger is manifested and those characterize its social essence"[40]; or "social danger"[41], "the degree of social danger"[42]. Despite certain differences in determination of criminal-legal factors, it is necessary to emphasize the unanimity of scientists' opinions regarding the distinguishing of a "social dangerousness degree" and "social danger" of a specific deed. The terms "social danger" and "social dangerousness degree" as the basic features of crime were studied by many scientists, including criminologists: A. Andrushko, O. M. Mykolenko, V. I. Smirnov, V. V. Shablysty, N. S. Yusikova and at al. At the same time we emphasize on these terms as fundamental factors of criminal liability for crimes against person's health.

Having studied various points of view on understanding of social dangerousness, V. S. Kovalsky differentiated the basic ones: "1) this is the ability to cause actual damage to a law-enforced object or create a threat of causing such damage; 2) the presence of such damage (real or potential) is estimated from the standpoint of the whole society, but not a specific victim. For this reason the danger is called social; 3) the damage is so big that it threatens fundamental public values, poses a danger to them[43]. The social danger of a crime is characterized by two indicators: its nature (it is a qualitative criterion (qualitative feature), depending on significance (public value) of the object of crime, and the degree (quantitative criterion (quantitative feature), and is determined by the characteristic of particular infringement, by the place, the way, the situation of its commission, availability of certain tools, a degree of implementation of criminal intent, and by the number of victims, etc.

In addition, scholars include the following factors to the criminal-legal ones: "1) a significant degree of social dangerousness of this deed; 2) the negative dynamics of growth of these deeds; 3) the necessity of criminal-legal support of a constitutional guarantee; 4) the presence of reasons and conditions of committing a crime that can not be eliminated

[40] Мельник М. І. Кримінологічні та кримінально-правові проблеми протидії корупції: автореф. дис. ... д-ра юрид. наук. Київ, 2002. 33 с.

[41] Доляновська І. М. Кримінальна відповідальність за експлуатацію дітей (аналіз складу злочину): автореф. дис. ... канд. юрид. наук. Київ, 2008. 18 с.

[42] Орлеан А. М. Соціальна обумовленість криміналізації та кримінально-правова характеристика торгівлі людьми: автореф. дис. ... канд. юрид. наук. Харків, 2003. 20 с.

[43] Українське кримінальне право. Загальна частина: підручник / за ред. В. О. Навроцького. Київ: Юрінком Інтер. 2013. 712 с.

without the implementation of criminal liability"[44], as well as "the presence of socially dangerous deeds, the degree of social danger of deeds, identifying sufficiency of features with crimes in this field, reality of criminal-legal influence on deeds"[45]. Thus, the material feature of any crime, including crimes against person's health, is social dangerousness of a deed that causes or is likely to cause harm to person's health.

According to the above mentioned, there is no single point of view on determining the conditionality of criminal liability through the prism of criminal-legal factors among the scholars at present. The conditionality of criminal-legal factors is determined by social dangerousness of crimes against person's health. The previous Criminal Codes (1922, 1927 and 1960) contained articles defining responsibility for socially dangerous unlawful deeds that did harm to person's health, with certain stylistic differences.

In our opinion, the criminal-legal factors defines the determination of criminal liability for crimes against person's health, inherent only in this field of law by way of formulation of articles in dispositions, as well as formulation of sanctions as generalized types and amount of penalties for these socially dangerous deeds.

Criminological factors At present, there are some problems as for differentiation of criminal legal and criminological factors. This is caused by the fact that scholars (O. O. Pashchenko, M. G. Zaslavska) state that criminological factors determine that the main reason for criminalization of a deed is its social dangerousness, the extent of which is influenced by public value of these public relations or social properties of consequences, caused by this deed. In our opinion, these features are precondition for criminal-legal factors, since they are widely used by both a theory of criminal law and criminology, and therefore they may belong to criminological factors.

The best suggestions are of O.V. Gorokhovska and V. A. Myslyvy, who researching criminological factors of a certain crime (crimes) suggest distinguishing: "a) large spreading of a kind of infringement analyzed;

[44] Кириченко Ю. В. Кримінальна відповідальність за викрадення електричної або теплової енергії: автореф. дис. ... канд. юрид. наук. Дніпропетровськ, 2009. 20 с.

[45] Мисливий В. А. Злочини проти безпеки дорожнього руху та експлуатації транспорту (кримінально-правове та кримінологічне дослідження): автореф. дис. ... д-ра юрид. наук. Київ, 2005. 36 с.

b) a level, structure and dynamics: c) reasons and conditions"[46], as well as "wide-spread nature of deeds subjected to criminalization, a level, structure, dynamics of such torts, a guilty person, a scope of caused harm, reasons and conditions contributed to torts, prediction of reasonableness of deed criminalization"[47].

Therefore, in order to outline the criminological factors, it is necessary to establish the status, structure and dynamics of crimes against person's health, preceded the adoption of the Criminal Code of Ukraine in 2001.

According to the statistical data analysis of the Department of Information and Analytical Support of the Ministry of Internal Affairs of Ukraine on the number of crimes against person's health in Ukraine for the period of 1997-2000, the conclusion can be made that the structure of crime constitutes *intentional grave physical injury* (Article 101 of the Criminal Code of 1960) Thus, during 1997, in comparison with other crimes against person's health, 43.88% were brought to criminal liability; in 1998 – 38.62%; in 1999 – 41.11%; in 2000 – 41.42%.

The structure of crimes of *intentional physical injury of middle gravity* (Article 102 of the Criminal Code of 1960), compared with other crimes against person's health is as follows: for 1997 – 43.88%; 1998 – 47.2%; 1999 – 46.55%; 2000 – 46.69%.

The structure of crimes of *intentional grave or physical injury of middle gravity caused in a state of intense emotional distress* (Article 103 of the Criminal Code of 1960), as compared with other crimes against person's health is as follows: for 1997 – 0.7%; 1998 – 0.71%; 1999 – 0.5%; 2000 – 0.47%.

The structure of crimes of *intentional grave physical injury in excess of the boundaries of necessary defense* (Article 104 of the Criminal Code of 1960), compared with other crimes against person's health is as follows: for 1997 – 1.4%; 1998 – 1.49%; 1999 – 1.33%; 2000 – 1.28%.

The structure of crimes *of careless grave or physical injury of middle gravity* (Article 105 of the Criminal Code of 1960), as compared with other crimes against person's health is as follows: for 1997 – 3.59%; 1998 – 4.15%; 1999 – 4.04%; 2000 – 3.5%.

[46] Гороховська О. В. Кримінальна відповідальність за вбивство через необережність: автореф. дис. ... канд. юрид. наук. Київ, 2003. 18 с.

[47] Мисливий В. А. Злочини проти безпеки дорожнього руху та експлуатації транспорту (кримінально-правове та кримінологічне дослідження): автореф. дис. ... д-ра юрид. наук. Київ, 2005. 36 с.

The structure of crimes of *intentional trivial physical injury* (Article 106 of the Criminal Code of 1960), compared with other crimes against person's health is as follows: for 1997 – 4.9%; 1998 – 5.96%; 1999 – 5.26%; 2000 – 5.44%.

The structure of crimes *of blows and torments* (Article 107 of the Criminal Code of 1960), as compared with other crimes against person's health is as follows: for 1997 – 0.7%; 1998 – 0.82%; 1999 – 0.57%; 2000 – 0.59%.

The structure of crimes on *contamination with sexually transmitted infections* (Article 108 of the Criminal Code of 1960), as compared with other crimes against person's health is as follows: for 1997 – 0.82%; 1998 – 0.81%; 1999 – 0.52%; 2000 – 0.44%.

The structure of crimes of *contamination with the human immunodeficiency virus* (Article 108-2 of the Criminal Code of 1960), compared with other crimes against person's health is as follows: for 1997 – 0.07%; 1998 – 0.2%; 1999 – 0.08%; 2000 – 0.12%. Table 1.1. shows the dynamics of crimes against person's health (in percentages) during 1997-2000.

Table 1.1

Article number	**Years**			
	1997	**1998**	**1999**	**2000**
101	27.4	22.5	25.4	24.69
102	24.57	24.66	25.79	24.96
103	30.52	28.53	21.33	19.6
104	26.32	26.1	24.59	22.93
105	24.17	26.07	26.89	22.5
106	23.51	26.63	24.95	24.89
107	27.15	29.35	21.85	21.6
108	32.64	30.13	20.54	16.66
108-2	16.04	40.74	18.51	24.69

Thus, according to statistics on crimes against parson's health, it can be stated that these indicators are a precondition for criminalization of these deeds in the Criminal Code of Ukraine in 2001. During four years (1997-2000 years), the statistical curve is as follows:

Intentional grave physical injury (Article 101 of the Criminal Code of 1960): in 1997, 7,602 was registered, in 1998 – 6,243, which is less by 8.6%; in 1998, the curve increased by 17.87%; in 1999 there was a

decrease of the level to 12.87% and in 2000 – to 2.76%. So, the indicators of intentional grave physical injury were quantitatively changed in 1998;

Intentional physical injury of middle gravity (Article 102 of the Criminal Code of 1960): in 1997, 7,603 was registered, in 1998 – 7,630, which is less by 0.3% compared with the previous year; in 1998 – less by 4.58%, compared to 1999, the indicators increased by 3.12% and in 2000 – by 6.6%.

Intentional grave or physical injury of middle gravity caused in a state of intense emotional distress (Article 103 of the Criminal Code of 1960): in 1997, 123 was registered, 115 (6.5%) in 1998; 1999 – 25.2%; the level of this crime significantly decreased during 1999-2000 – 6.14%; 2001 – 11.39%.

Intentional grave physical injury in excess of the boundaries of necessary defense (Article 104 of the Criminal Code of 1960): in 1997, 244 was registered, in 1998 -242, which is by 0.8% less than in the previous year, the same tendency was observed in following years: 1999 – 5.78%; 2000 – 6.57%; 2001 – 33.8%.

Careless grave or physical injury of middle gravity (Article 105 of the Criminal Code of 1960): 623 was registered in 1997, in 1998 – 672, which is 7.86% compared to the previous year; 1999 – 3.12%, and in subsequent years the level of crime has increased significantly: in 2000 – 16.3%; 2001 – 11.03%.

Intentional trivial physical injury (Article 106 of the Criminal Code of 1960): in 1997, 815 was registered, in 1998 – 964, that is, the increase of cases by 13.27%, while in subsequent years, the crime rate for this crime has increased: 1999 – 6.23%; 2000 – 0.22%; 2001 – 16.87%.

Blows and torments (Article 107 of the Criminal Code of 1960): 123 was registered in 1997, 133 in 1998, 133 in accordance with the above-mentioned data, the level of crime increased by 8.1%, later on the increase in a level of crime has decreased: 1999 – 25.56%; 2000 – 1.01%; 2001 – 16.32%.

Contamination with sexually transmitted infections (Article 108 of the Criminal Code of 1960): in 1997, 143 was registered, in 1998 – 132, which is 7.6% less than in the previous year; in 1999 the indicators decreased by 31.81%, in 2000 – by 18.88%, and in 2001 – by 87.61%.

Contamination with the human immunodeficiency virus (Article 108-2 of the Criminal Code of 1960): in 1997, 13 cases were registered, in 1998 –

33, which is 153.84% more than the previous one; 1999 – 54.54%; 2000: 33.33%; 2001 – 12.90%.

According to the study results on criminal-legal factors of crimes against person's health causing criminal liability, it is determined that the social dangerousness of these crimes, resulted in harm to person's health, influences criminalization of a deed. The criminological factors of these crimes include those factors that preceded the adoption of the Criminal Code of Ukraine in 2001, so, criminalization of crimes against person's health is affected by the following:

– Spreading of infringements on person's health in society;

– Dynamics of crimes against person's health at the territory of our state;

– The structure and status of the crime – the indicators of crimes against person's health during the time analyzed remain the stable, although, too high.

CONCLUSIONS

Determination of factors defined the necessity for adoption of some criminal-legal bans is a precondition for criminalization of a certain deed, as a result of which its relevant consolidation in the normative-legal act is carried out, namely in the Criminal Code of Ukraine. For declaration of social conditionality of crimes against person's health, the following factors are distinguished: historical (the development and formation of Ukrainian criminal legislation was carried out by using works of the Criminal Code of the USSR of 1922, 1927, the USSR in 1960), general social (the influence of religion and morality on the formation of social necessity and political reasonableness of establishing criminal liability for crimes against person's health), medical (special knowledge in the field of forensic medicine made it possible to carry out the division of physical injuries according to their types), socio-economic (loss of social activity as a full member of society and budget costs associated with the treatment and rehabilitation of such person), international legal (the adoption of criminal legal norms through the implementation of international norms and standards in national legislation), regulatory (the system of national legal norms regulating public relations in the field of person's health protection), criminal-legal (social dangerousness of crimes and their subsequent formulation in disposition of articles and sanctions as

generalized types and amount of punishment for those socially dangerous deeds) and criminological (spreading of infringements on person's health in society, their dynamics, structure and status of crimes). As a result of analysis of the indicators of crimes against person's health before adoption of the Criminal Code of Ukraine in 2001 it was established that the indicators are stable, although, too high

SUMMARY

In the study of the issue on social conditionality of criminal liability for crimes against person's health it is suggested to distinguish: historical, general social, medical, socio-economic, international-legal, regulatory, criminal-legal and criminological factors, the analysis of which is sufficient for determination of social conditionality of criminal liability for crimes against person's health.

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THE PATIENT'S RIGHTS TO PROPHYLACTIC MEASURES

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According to the official statistics of the Ministry of Health of Ukraine, there is a difficult situation with the state of population's health in the country, the main indicators of which such as an average life expectancy, mortality and illness level, are far from optimistic and have a tendency to deteriorate in the recent years.

Insufficient financing does not allow the Ukrainian budget medicine to provide the population with a necessary level of medical care, including prophylactic measures.

The purpose of the study is to identify the actual state of the patient's rights to prophylactic measures with the goal of reforming a health care system in a modern Ukraine.

Before defining the concept of «the patient's right to prophylactic measures», it is important to find out what prophylactic measures and patient are as well as the rights of people to prophylactic measures in the field of medical health care.

Thus, prophylactic measures are an essential component of the health care system, which is mainly aimed at forming the social-medical activities and motivating people to maintain a healthy lifestyle.

These measures are enshrined in the Article 6 of the Law of Ukraine "The Fundamentals of Ukrainian Law on Health Care", which states that every citizen has the right to health care, which includes:

a) Living standards, including food, clothing, accommodation, medical care and social services and welfare which are necessary for supporting human health;

b) Safe environment for life and health;

c) Sanitary and epidemic well-being of the territory and community, where a person lives;

d) Safe and healthy working, studying, domestic and resting conditions.

All of the examples mentioned above are the examples of citizen's rights to general prophylactic measures in the field of health care. If we

are talking about the patient's right to prophylactic measures, it is important to define who the patient is.

Patients (from Latin patiens – those who bear, suffer) – is a person or any living creature, who obtains medical assistance, is under medical observation and/or receives treatment for any illness, pathological condition or any disorder of health and life-sustaining activities, as well as uses medical services regardless the presence of the disease.

Accordingly the patient's right to prophylactic measures involves only those measures related to indirect references of people to the medical assistance or services. The basic medical prophylactic measures are medical examination, vaccination and rehabilitation.

Medical examination is an active dynamic monitoring of the population's health state, which includes a complex of prophylactic, diagnostic and medical-treatment methods.

Initially, the principles and methods of medical examination were used to fight socially-dangerous diseases like tuberculosis, syphilis, trachoma and etc. Nowadays the medical examination method is being used to monitor pregnant women, children, employees in the leading industrial and agronomic production, and patients with chronic diseases.

The main goal of medical examination is to protect and strengthen the population's health, prevention of diseases, the reduction of disease incidence, disabilities, mortality and achieving high life expectancy. Medical examination is included as a component in the large system of disease prevention, implemented by the state and the society.

Medical examination includes: a yearly medical examination with a laboratory-instrumental research to detect illnesses on early phases, as well as the examination of individuals who tend to have risks of certain illnesses development; additional examination of those, who are in need of it using modern diagnostic methods; identification of every person's health state; realization of medical-treatment set of measures to help patients and people with risk indicators and further systematic observation of their health state.

Approximately such a scheme of yearly medical examination of examination groups with the indication of nosological forms, the frequency of examinations, doctors of multiple specializations, recommended laboratory researches, and medical-treatment methods as

well as criteria of the effectiveness of medical examinations existed in the USSR.

A district pediatrician examined all children of his/her district every year: the frequency of children examinations in their first three years of life depended mainly on their age and health status when they were born. A surgeon (orthopedist), otorinolarinogist, ophthalmologist examined the children in their first year of life, from 3 to 5 years, before they entered school, in 3rd, 6th and 8th grades, neurophatologist – in the first year of their life, before they entered school and in 8th grade, other specialist conducted examinations only by indications. Every year the examination of teeth and oral cavity was conducted by paramedical staff followed by further sanitation of the dentist. Anthropometry, the determination of the acuity of the eyesight and hearing, tuberculosis tests, preliminary evaluation of neuropsyhic development were also conducted by the paramedical staff. Compulsory medical examinations of children and teenagers include: blood analysis, general urine analysis and the feces analysis to detect helminthes eggs, and arterial pressure measurement (from 7 years), and the X-ray of the chest (from 13 years). The pupils of 8th grade got their blood type and rhesus-factor determined.

A district therapeuist (who is the therapeuist of both territorial and industrial areas) examined all registered adult population every year. A pre-medical examination treatment was conducted, which included measuring the height and weight of the body, arterial pressure measurement, the acuity of eyesight and hearing, pheumothatchometry. Gynecological examination of women with compulsory cytology was conducted from the age of 18; electrocardiography – from 15 to 40 once every three 3 years, after the age of 40 – every year; mammography for women – once every two years after the age of 40. Fluorography of the chest plate was conducted differentially, but not less that once every three years, in case of a high level of tuberculosis incidents occurring on a particular territory – every year. This list was compulsory[1].

Currently medical examination of Ukrainian population is not compulsory for the citizens; only the duty of health care agencies to create conditions so that everybody who wants to undergo a medical examination could do it; no one can force citizens to undergo it; they must be interested in undergoing a medical examination themselves and find free time to undergo it. A similar situation is with prophylactic

vaccinations. The necessity of vaccinations should be considered as the state's responsibility to create certain conditions for vaccinations; it is not the obligation of citizens to undergo general vaccination.

The question about correlation between conducting medical examinations and the right to consent on medical intervention is still opened (Article 43 of the Fundamentals of Ukrainian Law on Health Care: the consent of an objectively informed legally-capable patient is necessary to use certain methods of diagnostic, prophylactic measures and treatment. Part 3 of Article 284 of the Civil Code of Ukraine also requires providing medical assistance for natural persons, who reached the age of 14 only with their consent).

The reducing of prophylactic activity in prophylactic treatment establishments caused a significant loss of human and material recourses. The lack of general medical examination programs influenced the supervision on health state of work-capable population and, especially, working population[1].

In 2010 in Ukraine the medical exanimation can obtain a new development. The Ministry of Health of Ukraine issued the Order "On Medical Examination of Population".

When conducting a medical examination of adults the heights, weight and arterial pressure measurements, analysis of urine and feces, chest plate X-ray, mammography and the ultra-sound examination of prostate for men must become compulsory. It was decided that the district or family doctor had to plan a medical examination for all citizens living in the service area, and made a list of all who underwent medical examination.

The price of such medical was 6 billion UAH. These conditional 6 billion UAH in calculation per 30 million work-capable people meant 200 UAH (25 dollars) per one person. There is barely enough money to conduct urine and feces analysis. And there is nothing for mammography, ultrasonography and x-rays because these procedures have been paid procedures for a long time;

In addition, in 2011in Ukraine the reform of a health care system was started. Its first goal was to test a new, optimized model of health care under the conditions of trial projects in specially determined districts. A full-scale reform was conducted in 2013.

[1] *Дорофеев М. А*. Совершенствование диспансеризации работающего населения в условиях модернизации здравоохранения. Дисс. канд. мед.н. – М., 2010. – С. 168.

Before the reform, we had a primary link in the form of POPs (paramedic-obstetrician posts), village medical ambulatories, district hospital, ambulance stations, clinics with district doctors and specialist doctors, CDH (center district hospitals), city and regional hospitals and clinics, specialized hospital dispensaries and centers.

As a result of the reform, it is planned to close almost every district and regional clinics, reduce CDH to its minimum, leaving only emergency medical care as their main function, to close a big amount of hospitals, and replace them with several dozens of family doctors who are specialized in medical healthcare, village ambulatories must be renamed into the ambulatories of family medicine and every one of them should have a family doctor. All main qualified medical care should be transferred to TMA (territorial medical association), which will be located in the biggest district centers (one TMA for 3-4 districts) and regional centers.

According to the reform, the medical examination should be conducted by family doctors, whose functional duties are observing children from the first years of their life and adults, health improvement, vaccination, and educating people in leading a healthy way of life. It should be mentioned that the work hours of the family doctor are significantly longer than his/her actual abilities, and all of this is combined with their low wages. This means that medical examination, instead of being a symbol of prophylactic medicine, has become a great profanation which costs 6 billion. Doctors formally conducted medical examination. However, if the diseases had been detected, this would have not caused the treatment and provision of certain medicines due to lack of money in the state's budget.

Maybe it is necessary to implement laws on medical examination undergoing, which will set the more difficult conditions for citizens, who do not care about their health state, in relation to insurance, lending, employment, education and etc.

However, if there is no health and there are no funds for medical treatment, surgery or expensive effective medicine, than a person has only one way – to lie to the state, that they are perfectly healthy while buying medical certificates.

So, doctors believe that the plans of the MOH are impossible, from a legal point of view. For the majority of the population there are no labor

obligations in relation to medical examination undergoing, just like it was in the USSR. Making people forcefully undergo medical examination is a very hard task to accomplish. The government hopes that family doctors will recommend their patients to undergo a medical examination. However, the institution of a family doctor is not developed enough in Ukraine.

One of the main problems of Ukrainian family medicine is financing one. In the primary care establishments only up to 30% of patients start and completely finish their treatment and only 50% in rural areas[2].

The share weight of amounts for maintaining healthcare establishments, which provide first-aid medical-sanitary treatment, is less than 10% of the general amount of expenses on healthcare that, considering the poor level of material and technical support, is absolutely insufficient.

Staff provision is also an important problem of the family medicine in Ukraine. Although there is a rather high number of graduates, only a small amount of them remain to work in a medical field, which is mostly explained by low wages, the lack of social guarantees and the conditions for young professionals. We should also note that forced sending of young professionals to work in healthcare establishment does not bring any expected positive results. A significant rise of the outflow of paramedical professionals to neighboring countries is being observed, where the wages for similar work are much higher (in countries like Poland, Czech Republic, Russian Federation and Belarus).

The stuff provision problem is not only associated with training of family doctors, but also family nurses, which is the most specific part of the reform. First of all, there is a lack of training for family nurses in our educating establishments, and secondly, there are not proper advanced training courses for them.

Moreover, family medicine provides that every doctor must treat 1200 individuals, and nurses must treat 600 individuals each year. This means that for every family doctor there should be two family nurses, but that is not true. The main issue here is not in insufficient number, but in the fact that the organization of work in our clinics is the same as it was before– with an irrational split of work forces.

[2] Гришман Л.Семейный врач: миф или реальность? / Здоров'я України. – № 18. – Сентябрь. – 2008. – С. 62.

Basic analysis can be conducted in the primary sanitary-medical treatment establishments (in ambulatories), namely: the analysis of blood, urine, the level of glucose in blood. If there is a necessity in a further, more detailed examination and consultation, the first-aid doctor (family doctor, therapeuist, pediatrician, and obstetrician-gynecologist) gives referrals to the medical establishment of the secondary level. The amount of needed examinations is determined by the patient's illness.

As we could see, medical examinations, conducted by a family doctor, have a miserable scope of examinations and a medial examination by the specialist is not provided. Although the family doctor is being defined as a super-doctor of a new formation, who knows both therapy and gynecology, pediatrics and neurology, ophthalmology, surgery and psychiatrics and other fields of medicine. However, in reality, he/she just turns into a paramedic of a general profile.

Often the examples of rural doctors are given to justify the positions of family doctors, rural doctors who worked at village areas in the 19th century. At that time medicine used to be at another level of development and there were not any specific medical specializations.

Such a state as Ukraine cannot fully finance the healthcare industry; not any budget will be enough to fully cover it. We can completely forget about soviet-type medicine, which was funded from the state's money. And the family medicine, first of all, provides for a change in distribution of funds. We cannot take the way of financing highly specialized establishments (which are expensive), so it is necessary to change the approaches for providing medical treatment.

In international practice there are several types of family doctors' work. It is too early to decide how the Ukrainian family doctor is going to work. The essence is in the fact that the funds are being redistributed per each citizen with whom a doctor works, and not for an in-patient bed, like it was in the previous system[3,4].

In practice this means that the doctor is interested in healing the patient, and so that the patient stays healthy for a long time (if the patient is not ill, the money is still distributed. Half of them are going to

[3] *Хвисюк О.М.* Розвиток сімейної медицини і здоров'я населення // О.М.Хвисюк, А.Р.Короп, О.М. Зайцев // Проблеми сучасної медичної науки та освіти. – 2009.– № 4. – С.5-9.

[4] *Проблемы* организации диспансерного наблюдения детей сельской местности / Н.М. Коренев, Л.П. Булага, А.М. Коломиец [и др.] // Актуальні питання внутрішньої медицини в практиці сімейного лікаря: матеріали наук.-практ. конф. з міжнар. участю, 4-5 жовтня 2006 р., Харків / М-во охорони здоров'я України [та ін.]. – Х.: Харк. акад. післядипл. освіти, 2006. – С. 37-38.

additional wages, and the other half goes for the family ambulatories equipment). In modern hospitals the doctor's wage depends on the amount of a number and time of patient's staying in the ward, which means that currently it is profitable for the doctor to treat their patient slowly and ineffectively.

The turnover of funds, allocated to every citizen, is a fund, which is either fully or partially being run by a family doctor. He/she can only direct them, but they do not actually belong to him/her. Theoretically, if he/she has already treated a patient, the allocated money is still in the fund. If the case requires specialized assistance, then it will be funded from the same fund. Here it is possible see the family doctor's interest not to refer a patient to a certain specialist, even if it is needed. For example, a salary of a family doctor varies from 1650 UAH to 6500 UAH and depends on the amount of money, which is left in the fund.

Maybe, it would be easier to go to see a doctor since a person would know where and from whom specifically it is possible to receive help. If some specific assistance is needed, this is a family doctors' care.

This is how the principle of stages will be conducted; 70-80% of referrals will go under the competence of family doctors – the first-aid level. 20% of them are going to stationary hospitals, where they get help from specialists. This is the secondary level. 10% of them, who need treatment in institutions and clinics, are most likely patients with rare or severe complicated diseases – this is the third level of assistance.

And if the patients really want to get a certain specialists' assistance, they can obtain it even without a reference of a family doctor, but on a paid basis.

Vaccination is injection of antigenic material with the goal of asserting immunity to an illness, which will prevent infection and weaken its consequences.

According to the Annex to the Order № 48 of MOH of Ukraine on 03.02.2006 "On the procedures of conducting prophylactic vaccinations in Ukraine and the control of quality and circulation of medical immune-biological drugs" (hereinafter referred to as the № 48 Order of MOH), the following vaccinations against certain illnesses are included to the schedule, made in such ages: tuberculosis – 3-7 days, 7 and 14 years; hepatitis B in the first day, the 1st and 6th month of life; diphtheria on the 3rd, 4th, 5th, 18th month, and then every 10 years; whooping cough 3, 4, 5,

18 month; tetanus 3, 4, 5, 18 months, 6, 14, 18 years, then every 10 years; poliomyelitis inactivated (dead) vaccine: 3,4 month, oral (alive) vaccine: 5, 18 month, 6, 14, years; hemophilic infection 3, 4, 5, 17 month; measles 12 month, 6 years; rubella 12 month, 6 years, 15 years (for girls); parotiditis 12 month, 6 years, 15 years (for boys).

Mandatory vaccinations (although one could refuse from them, as we could see below) are only vaccinations consolidated in the Law of Ukraine "On Protection of Citizens from Infectious Diseases" (Article 12) and in the Law of Ukraine "On providing sanitary and epidemiological well-being of the population" (Article 27) against diphtheria, whooping cough, measles, poliomyelitis, tetanus and tuberculosis. As we could see, vaccinations against hepatitis B, hemophilic infections, rubella and parotitis are not mandatory, although they are included in the vaccination calendar. Unfortunately, this fact is unknown to most of parents, which are being asserted in the hospitals that all of the vaccines included in the calendar are «mandatory». However, the illegality of including these vaccinations to the calendar is well-known in the MOH and the Verkhovna Rada of Ukraine: a good illustration of this is an attempt in June of 2007 to «drag in» a law this addition to the list of mandatory vaccinations, the vaccinations against Hepatitis B, hemophilic infection and rabies.

In the same order №48 MOH officially recognizes the possibility of two types of undesirable consequences of vaccinations: reactions (clinical and laboratory signs of unstable pathological functional changes in the organism, which appear because of the effects of vaccinations) and the complications ("long-lasting functional and morphological changes in the organism, which go beyond the limits of physiological fluctuations and result in major violations of health state").

Therefore, the Law of Ukraine "The Fundamentals of Ukrainian Law on Health Care" (Article 42) prohibits medical interference (the use of diagnostic methods, prophylactic or treatment, associated with the influence on the human organism), when it could harm the health of the patient. However, practice shows that this does not prevent vaccines from endangering the health of children and adults.

There are also contradictions to vaccinations. In the order № 48 of MOH it is repeatedly emphasized on the importance of the accounting of contraindication: "The vaccines are only allowed to be done if…. they

meet the indications and contraindications about their injection". All newborn babies who do not have contraindications are obligated to have vaccinations. However, as we could previously see «all newborns» get vaccines from hepatitis and tuberculosis, according to the vaccination calendar, while they are in the maternity clinic, in the first days or even hours after being born, and among the contraindications, we could see the following ones in the same order:

– Severe complications from the previous dose in the form of anaphylactic shock;

– Allergies to any components of the vaccine;

– Epileptic seizure syndrome with convulsion twice a month and more often;

– Complicated reactions to previous vaccine injections;

– Tuberculosis infections;

It is clear that none of these diagnoses could be either confirmed, nor could it be disproved for a baby:

– The «previous doze» is absent in the baby, that is why no one could guarantee the absence of anaphylactic shock or any "complicated reaction" as a response to the vaccine;

– No baby is examined for a sign of an allergic reaction "to any component of the vaccine" (since the vaccine contain a lot of dangerous components, including such well-known allergens, as protein compounds, mercury, phenol, etc.);

– The presence of a newborn epileptic syndrome – the frequency of convulsions can not be predicted at birth;

– And, of course, none of the babies could be examined for tuberculosis infection.

Consequently, all of the contraindications mentioned above and "predictably" documented by MOH, in relation to babies, can not be completely checked. However, even elder children, who have already received vaccinations, are not insured from more tragic consequences, because, for example, toxic substances, included in the vaccine, with regular injection, can show the so-called cumulative (accumulation) effect. This property of vaccines in the MOH documents is not shown in any way; such risk factor as a number of vaccines that have been already injected in a children, is not included in the contraindications. As a result

the second, third or even the last of “mandatory” vaccinations could be fatal, although the previous ones were absolutely “normal”.

In case the health state deterioration related to the vaccination, one should see a doctor, who is financially and administratively independent from the clinic that did the vaccination. Otherwise, the diagnosis may not be objective (which means that the treatment could not be adequate), just “not to spoil the reputation of the clinic”.

The doctor is obligated to fully provide information about the possible negative consequences of vaccines in the full extent and timely, which means before the vaccinations are done. This is regulated by:

– The Civil Code of Ukraine (Article 302 “A natural person has the right to freely collect, store, use and disseminate information”);

– The Law of Ukraine “The Fundamentals of Ukrainian Law on Health Care” (Article 6 “Every citizen of Ukraine has the right to…. be reliably and timely informed about the state of their health and the state of population’s health, including the existing and possible factors of risks and their stage»; Article 39 “The doctor is obliged to inform the patient in a clear form the aim of conducting recommended treatment measures…. And also the risks for the patient’s life and health”;

– The Law of Ukraine “On the Protection of Childhood” (Article 6 “…the state uses the measures to provide all layers of society, in particular parents and children, with the information about healthcare”

-The Law of Ukraine “On Information” (Article 5 «The main principles of informational relations are: the guarantee about the rights to be informed, openness, and the availability of the information, the fullness and the preciseness of the information”; Article 9 “All citizens of Ukraine have the right to information, which provides the possibility to freely access the information, necessary for them to realize their rights”; Article 29 “The access to open information is ensured by freely providing interested citizens with it”, Article 30 “Information about medical services cannot be referred to…. confidential information”);

– The Law of Ukraine “On Protection of Population from Infectious Diseases” (Article 12 “Medical employees, who conduct prophylactic vaccinations are obliged to provide objective information to individuals who undergo vaccination or to their legal representatives about the effectiveness of prophylactic vaccinations and what the possible post-

vaccination complications are. Individuals from the age of 15 to 18 years undergo vaccination ... only after provision of objective information….");

– The Law of Ukraine "On protection of sanitary and epidemic well-being of the population" (Article 4 "Citizens have the right to objective and timely information about the existing and possible risk factors for their health state and their extant");

– The Constitution of Ukraine (Article 50 «Every citizen is guaranteed to have the rights to have free access to the information about the state of the environment, the quality of food products and household items. This kind of information cannot be confidential.");

– The Law of Ukraine "On Protection of Consumer Rights» (Article 41 "Consumers during the purchase or the use of products, sold at the territory of Ukraine, have the right to… necessary, accessible, accurate and timely information on the products"; Article 6 "The seller (the manufacturer, the executor) is obliged to provide information about this product."; Article 15 "The consumer has the right to be provided with necessary, accessible, reliable and in-time information about the product. The information should be provided to the consumer prior to the consumer buying the product or ordering work (services). Information about the products must include… information about the components that are harmful for the health and precautions regarding the use of individual products; a remark of existence in the components of genetically-modified components. Talking about the products, that may be life-threatening to the health of the consumer, the manufacturer (the executor, seller) is obliged to provide the consumer with the information about the products and possible consequences of their consuming (using)";

– The International Code of Medical Ethics ("The doctor must be absolutely honest with the patients");

– Convention for the Protection of Human Rights and the Dignity regarding the application of biology and medicine (Convection on human rights and biomedicine) – Article 5 "...a person is provided in advance with relevant information about the goals and the nature of intervention, as well as its consequences and risks";

– Convention on Children's Rights (Article 24 «State members… use measures on….the provision of information to all layers of society, in particular parents and children, regarding the health of children, hygiene, sanitation of the child's environment and the prevention of accidents.

Vaccinations, as well as other procedures (such as the tuberculosis test, fluorography, blood analysis, etc), are types of medical aid that could be declined");

– The Civil Code of Ukraine (Article 284 "Granting medical aid to a natural person, who reached the age of 14, could only be done with consent ….A natural person in full legal age ….has the right to decline from the treatment");

– Convention for the Protection of Human Rights and the Dignity regarding the application of biology and medicine (Convection on human rights and biomedicine)

– Article 5 "Any intervention in the field of health could only be done after an informed free-will consent of the relevant individual. The relevant individual could withdraw from his/her consent at any time without any obstacle"; Article 6 "According to the legislation, if a minor person is not legally capable to give his/her consent to medical intervention, it could only be carried out with the permission of their representative. Vaccinations are a method of prophylactic measures, which is quite risky";

– The Law of Ukraine «The Fundamentals of Ukrainian Law on Health Care» (Article 42 «Risky methods…. of prophylactic measures….are considered appropriate, if they are….being used with the consent of a patient who is informed about their possible negative consequences"; Article 43 "The consent of an informed patient is necessary for the use of… prophylactic methods…. Regarding the patient, who has not reached the age of 15, medical intervention is carried out with the consent of his/her legal representatives"

The possibility of refusal from the injections of vaccines is directly enshrined in the law:

– The Law of Ukraine "On Protection of Population from Infectious Diseases" (Article 12 "Full-aged legally capable citizens get prophylactic vaccinations only with their consent… Individuals, who have not reached the age of 15….get vaccinated with the consent of their parents. Individuals of 15 to 18 years old get prophylactic vaccinations with their consent and with the consent of their parents...The information about…the refusal from prophylactic vaccinations are subject to statistical recording". If the person and (or) their legal representatives refuse from mandatory

prophylactic vaccinations, a doctor has the right to take an appropriate written confirmation from them.

It is enough to leave the refusal in written form in your local hospital (or send it there as a recommended letter with a statement about of its delivery) in one copy, if a child is not attending kindergarten or school»;

– The Law of Ukraine "On Protection of Population from Infectious Diseases» (Article 12 "If the person and (or) his/her legal representatives refuse from mandatory prophylactic vaccination, the doctor has the right to take an appropriate written confirmation from them, and if they refuse to give such confirmation – to testify it by the act in the presence of witnesses.

If the refusal is made while attending a maternity hospital, a kindergarten or a school, then it is necessary to give a copy of the refusal with the acknowledgment to the administrator of the establishment, as well as to other persons, who can participate in the vaccination procedure: obstetrician, a school nurse, a teacher and others. A separate copy of the refusal is necessary to put in the child's school diary (with the ability to present it if required), and a child should be educated how to behave appropriately.

At the same time, medical staff of the clinic cannot demand the inclusion of additional points in the refusal of vaccinations: about the refusal of parents from treatment, about the parent's responsibility for the consequences of the illnesses and etc. The form of the refusal is not defined by law, and parents should not support such self-initiated activity of the clinic, because medical aid could be needed in situations not related to vaccinations.

Refusal from the acceptance of non-vaccinated children into the kindergarten or school is considered illegal. Even one of the Laws of Ukraine prohibits non-vaccinated children to attend children establishments": the Law of Ukraine "On Protection of Population from Infectious Diseases" (Article 15 «Children, not attended prophylactic vaccinations according to the vaccination calendar are prohibited to attend children establishments").

However, a number of other laws (and especially the Constitution, having the highest legal force – Article 8) establish the absolute right to education for every child:

– The Constitution of Ukraine (Article 53 “Everyone has the right to education. Full comprehensive secondary education is compulsory”);

– The decision of the Constitutional Court of Ukraine from 04.03.2003 № 5-rp/2004 (“The availability of education as a constitutional guarantee of the realization of the right to education… means, that no one could be refused in their right to education, and the state must create opportunities to exercise this right”);

– The Law of Ukraine “On Protection of Childhood” (Article 19 “Every child has the right to education”);

– The Law of Ukraine “On General Secondary Education” (Article 2 “…ensuring the rights of citizens for the accessibility of the general secondary education which should be absolutely free”; Article 6 “…To Ukrainian citizens independently… on…the convictions…or any other features the accessibility of the absolutely free general secondary education is provided…”);

– The Law of Ukraine “On Pre-school Education” (Article 2 “…ensuring of the child’s right to have accessible free pre-school education”; «Article 6 «…the accessibility for every citizen to educational services, given by pre-school education system…”);

– The Law of Ukraine “On Education” (Article 3 “Ukrainian citizens have the right to have free education in every state education establishments, regardless of…worldviews…health state and other circumstances»; Article 6 «Main principles of education in Ukraine are: the accessibility for every citizen of all forms and types of educational services provided by the state”);

– The First Protocol of the Convection On Protection of Human Rights and Fundamental Freedoms (Article 2 “No one could be denied the right to education”);

– Convention on the Rights of the Child (Article 28 «State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity they shall, in particular….a) make primary education compulsory and available free to all);

– Universal declaration of human rights (Article 26 “Every person has the right to education. Primary education must be compulsory”);

– International Covenant on economic, social and cultural rights (Article 13 «1. States, who participate in this Covenant, recognize the

rights of every person to education. 2. a) primary education shall be compulsory, b) secondary education shall be open and accessible for all by taking necessary measures»);

– Convention on the fight against discrimination in education (Article 1 «1. … the term "discrimination" includes any discrepancy, exclusion, restriction or advantage on the basis of…convictions… which has the goal or the consequences of destruction or violation of the equality of relations in education, and in particular: a) the closure of access to education of some grade or type to an individual or a group of individuals".)

In addition, a number of laws protect Ukrainian citizens from discrimination, connected to convictions or the health state;

– The Constitution of Ukraine (Article 24 "The citizens have equal constitutional rights and freedoms before the law. There cannot be privileges or restrictions associated with the features…convictions… or some others features");

– The Law of Ukraine "The Fundamentals of Ukrainian Law on Health Care" (Article 6 "Every citizen of Ukraine has the right to health protection, which provides… d) legal protection against any illegal forms of discrimination, associated with the health state");

– Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14 (1) "The exercise of rights and freedoms shall be guaranteed without any discrimination or…convictions…or any other circumstances»);

– Protocol № 12 to the Convection for the Protection of Human Rights and Fundamental Freedoms (Article 1 "1. The implementation of any right stipulated by law is ensured without discrimination based on any feature, for example the feature…. convictions… or any other features. 2. No one could be discriminated by any of the state body based on any kind of feature, for example on such specified in the clause 1");

– Convention on the Rights of the Child (Article 2 "1. State Parties…. provide every… rights… without any discrimination, regardless of the health's state….of the child. 2. State Parties… take all necessary measures to ensure the protection of child from any forms of discrimination…. based on… the beliefs or the opinions of the child, child's parents, legal guardians or any other family members";

– Convention for the Protection of Human Rights and Dignity with regard to the Application of Biology and Medicine (Convention on the

Human Rights and Biomedicine) (Article 1 "The Parties to this Convection protect the dignity and the equality of all people and guarantee to each person – without any discrimination -respect for their inviolability – and other rights and fundamental freedoms with regard to the application of biology and medicine");

– The Universal Declaration of Human Rights (Article 19 "Every person has the right to freedom of their beliefs and their expression; this right includes the freedom to freely adhere to their convictions");

– The European Social Charter (Part 1 "11. Every person has the right to use any means which would help them to achieve the best possible health state")

So, how one can settle a child to kindergarten or school without vaccination?

– The procedure of accepting children into a kindergarten is established by a relevant Regulations "On the Pre-school Educational Establishment" and approved by the Cabinet of the Ministers of Ukraine on 12th of March, 2003 № 305 ("6. The acceptance of children into the pre-school educational establishment is conducted by the administrator of the establishment during a calendar year based on the parents' application or the persons who act in their capacity, the medical certificate about the children's health state, and the certificate by the district doctor on the epidemiological environment as well as a birth certificate. 12. The expulsion of a child from a pre-school educational establishment of a public and communal ownership could be done…. based on the medical conclusion on the child's health state, which excludes the possibility of their further stay in a pre-school educational establishment of this type… The administration of the pre-school educational establishment is obliged to inform the parents or persons who act in their capacity about the expulsion of the child in a written form and at least 10 calendar days prior the expulsion. The expulsion from a pre-school educational establishment without reasons is strictly prohibited; 13. The procedure for the acceptance, expulsion and keeping of child's place in a pre-school establishment with a private form of ownership is determined by the founder (the owner). The procedure for the acceptance of children is established by law");

– The Law of Ukraine "On General Secondary Education" (Article 18 "The enrolment of pupils. 2. The enrolment of pupils to

secondary educational establishment is conducted by the order of the director, issued on the basis of the application, with the presence of the standard medical certificate and accordingly the document about education (excluding first grade pupils)".

As we could see, in both cases, the head of the establishment is responsible for the child's enrolment to the children establishment. The immediate presence of vaccinations is not listed as a necessary condition of the child's enrolment. Such necessary condition is the availability of a medical certificate about the state of health, namely, whether the child is healthy or sick at the moment. It is absolutely obvious that the absence of vaccinations themselves does not mean that the child is sick. Practice shows, as a rule, that the head of the kindergarten/school will be totally satisfied with the conclusion in the medical certificate like this: "According to the child's health state, he or she is capable of attending kindergarten/school. This option is fully in compliance with the law, and this is what you must request from the clinic.

A letter is given to the clinic with the requirement to give a medical certificate for settlement a child to the kindergarten or the school. In case of the clinic's refusal to give such certificate a new letter (in an appropriate form) with the situation description and a copy of the refusal must be sent into the local prosecutor's office and to the public office of the President of Ukraine. In addition, you can simultaneously file a claim on violation of the constitutional right to education to the court. If the clinic insists that a non-vaccinated child cannot attend the group because of his or her health state, then one can require in the application to open a medical leave certificate for taking care about the child. In no case one should try to obtain a "fake" certificate. Such actions are considered as a crime, and in that way, the child will be registered as vaccinated in the certificate, which will not protect him or her from unplanned or planned vaccinations at the place of studying. Even if the parents warned the staff about the "individual schedule of vaccination", such child still can not avoid a "planned" vaccination.

The doctor has no right to inform the school, kindergarten, workplace or the neighbors of "refusing persons" about refusal from vaccinations. The presence or the absence of vaccinations refers to the information about the patient's health state, which means this is confidential medical information which cannot be disclosed:

– The Civil Code of Ukraine (Article 286 “1. A natural person has the right to the secret of information about their health state, about the fact of referring to medical aid, diagnosis, as well as the information that they have obtained while attending a medical examination. 2. It is illegal to require and submit the information about the diagnoses and methods of treating of the natural person at workplace or educational establishment. 3. A natural person is obliged to keep from disseminating information, mentioned in the first part of this article, which became known to him or her in connection with the performance of official duties or other sources”);

– The Law of Ukraine “Fundamentals of Ukrainian Law on Health Care” (Article 40 “Medical staff and other persons who in connection with their professional or official duties obtained information about the illness, medical examination, check and its result, private and family life of the citizen, do not have the right to disclose such information, except situations provided by legal acts);

– The Law of Ukraine “On Information” (Article 46 “The information which belongs to the medical secret shall not be disclosed”).

The consequences of positive Mantoux test (tuberculosis diagnostic) could be as follows:

– The Law of Ukraine “On the Fight against Tuberculosis Infection” (Article 1 “Tuberculosis diagnostic is a specific diagnostic test, which is done with tuberculin, to detect those who are infected with the tuberculosis micro-bacteria timely and those who are tuberculosis-ill; the persons infected with the tuberculosis bacteria are those who have a positive immune reaction to tuberculin”).

Thus, a positive Mantoux test (which usually appears as “false positive” because of the allergic reaction to tuberculin, which will be found out later) proves that the person is infected. According to the law such measures will be immediately taken to a person:

– The Law of Ukraine “On the Fight against Tuberculosis Infection” (Article 11 “Chemo-prophylactic of tuberculosis applies to the persons, who are infected with micro-bacteria of tuberculosis and are under 18 years, in whom a positive reaction to tuberculin has been detected for the first time in their lives.. The persons, who are infected with the tuberculin micro-bacteria aged over 18, can undergo chemo-prophylactic under the conditions of medical indications”).

As we could see, such child will be immediately exposed to chemo-prophylactic therapy without any additional medical examinations or indications (which is different from adults) as well as registered in tuberculosis-dispensary with mandatory regular x-ray diagnostics and etc. This is why the rejection from the Mantu test from the start would be the most right action and the request for help of psychiatric only if there are problems with lungs or breathing organs. A person, who does not have the status of a tuberculosis-infected person, can freely reject the Mantu test as well as any other vaccinations or medical interventions.

The Refusal of the acceptance of children into the kindergarten or the school based on the absence of Mantoux test is illegal. Moreover, this is what is written in the law on vaccination and tuberculosis diagnostic:

– The Law of Ukraine "On the Protection of Population from Infectious Diseases" (Article 15 "Children, who have not received prophylactic vaccinations according to the calendar of vaccinations, are not allowed to attend children establishments");

– The Law of Ukraine "On the Fight against Illnesses and Tuberculosis" (Article 10 "The Registration and acceptance of children under 14 to educational, health-care and other children establishments is carried out according to the requirements of Article 15 of the Law of Ukraine "On the Protection of Population from Infectious Diseases".)

The results of tuberculin diagnostic and other types of tuberculosis diagnostic for children are given in the appropriate certificate of the health care establishment. However, Mantoux test is not a vaccination; it is an entirely different concept:

– The Order № 48 of MOH ("…In children, who are under the age of two month, vaccinations against tuberculosis are carried out without the previous Mantoux test….Vaccination is conducted if case of the negative results of the test….the Mantoux test is conducted after prophylactic vaccinations").

Therefore, Article 15 mentioned above can not be applied in that situation and Article 10 requires only the provision of a certificate from the clinic about the results of Mantoux test (for example, "not done") and about the absence of clinical signs of tuberculosis.

In addition, Article 10 can not be applied at all to children who are already attending a children establishment. For these children, the Procedure for carrying out compulsory prophylactic examinations of

particular categories of the population to detect tuberculosis can be applied (approved by the Cabinet of Ministers of Ukraine № 143 on 15th February, 2006. "4. During compulsory medical examination such diagnosis methods are used: – tuberculosis diagnostic – for children under the age of 15").

In this case, we could not find information in laws about possible sanctions regarding children, which have not undergone medical examination in full. At least in the event of threat of such sanctions, the parents of the children must require detailed explanations with the reference to different laws (but not to the Order of the Ministry, the State Service on Safety of Food Products, and etc.

Does the lack of vaccinations apply restrictions to the choice of professions now or in the future? On the one hand, it is obvious that the legislation of Ukraine clearly states about the professions which require compulsory additional vaccinations (excluding the calendar ones):

– The Law of Ukraine "On the Protection of Population against Infectious Diseases" (Article 12 "Prophylactic vaccinations against diphtheria, whooping cough, measles, poliomyelitis, tetanus, tuberculosis are compulsory and included in the calendar of vaccinations. Employees of certain professions, industries and organizations whose activities may lead to the infection of these employees and (or) the spread of infectious diseases, are subject to compulsory preventive vaccination against other relevant infectious diseases. In case of refusal or evasion from compulsory preventive vaccinations under the procedure established by law, these employees are suspended from performing the specified types of work. The list of professions, industries and organizations whose employees are subject to compulsory preventive vaccination against other relevant infectious diseases is established by the Cabinet of Ministers of Ukraine").

On the other hand, there are no government regulations with such list of professions concerning vaccination. There is a list concerning compulsory medical examinations approved by the Resolution of the Cabinet of Ministers of Ukraine on 23d May, 2001 № 559 («The list of professions, industries and organizations whose employees are subject to compulsory prophylactic medical examinations") and the relevant Order of MOH about procedures conducted at such examinations (the Order of the Ministry of Health of Ukraine on 23.07.2002 № 280 (z0639-02) "The list of necessary examinations of special doctors, types of clinical,

laboratory and other research necessary for carrying out compulsory examinations, and the regularity of their conduct". However, both these documents do not mention vaccinations. The list of such professions is in the Order of the Ministry of Health № 48 (in the section "Recommended vaccinations"), but the Order of the Ministry of Health cannot be equal to the Resolution of the Cabinet of Ministers.

In Ukraine, neither material compensation for victims of post-vaccination complications nor temporary restrictions on the right to education are directly provided by in the Law "On the Protection of Population against Infectious Diseases". However, compensation for damage to health (which is any complication from vaccination) is provided by other laws of Ukraine and ratified international documents:

– The Law of Ukraine "On Fundamentals of Ukrainian Law on Health Care" (Article 6 "Every citizen of Ukraine has the right to health care, which provides: i) compensation for damage caused to health"; Article 8 "In case of violation of legitimate rights and interests of citizens in the field of health care, the relevant state, public or other bodies, enterprises, institutions and organizations, their officials and citizens are obliged to take measures for ... compensation for the damage caused");

Convention on the Protection of Human Rights and Dignity of the Human Being on the Application of Biology and Medicine (the Convention on Human Rights and Biomedicine) (Article 24 "A person who was unlawfully injured as a result of the interference has the right to a fair reimbursement in accordance with the requirements and procedures established by law").

Therefore, the right of Ukrainian citizens to prophylactic measures has received a new representation, which is, in fact, a simplification, cost-reduction and decrease in the level of examination and illness detection.

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проф. М. М. Білинської, проф. Я. Ф. Радиша]. – К. : НАДУ, 2013. – 424 с. – Авторські с. 45–62, 288–293.

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ADAPTATION OF UKRAINIAN LEGISLATION TO EU LEGISLATION IN THE FIELD OF CONTRACTUAL INSURANCE RELATIONS

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Ukrainian integration into the European Union (hereinafter referred to as the EU) is impossible without national legislation harmonization with the EU legislation being mandatory precondition of successful implementation of European aspirations of our state. However, the adaptation process, having started from the moment of entering into force of Partnership and co-operation agreement between the European communities and their member states, and Ukraine,[1] according to which the policy to the harmonization of national legislation with the EU legislation and law has been proclaimed, is not so easy, taking into account a large scope of normative material in all primary adaptation fields, one of them is the field of service provision, including insurance services.

The daily life of the state in general, as well as its individual people, is accompanied by certain risks, that is why insurance as a category reflecting a special domain of society relations is one of the most efficient legal instruments ensuring the protection of property interests of natural persons and legal entities from possible costs and losses, caused by property damage or loss due to acts of God, road traffic accidents, non-performance of obligations by counterparties to the agreement etc. At the same time, insurance as a necessary element of society socio-economic system is not only an institution of ensuring of property interest renewal of natural persons and legal entities due to certain life situations connected with sudden danger, but also one of the most stable source of long-term investment. It is determined by the fact that today there is a great necessity in insurance services along with other types of services.

Currently, the legal regulation of relations in insurance service provision in Ukraine is carried out by Chapter 67 of the Civil Code of

[1] Про ратифікацію Угоди про партнерство і співробітництво між Україною і Європейськими Співтовариствами та їх державами-членами: Закон України від 10 листопада 1994 р. № 237/94-ВР // Відомості Верховної Ради України. 1994. № 46. Ст. 415.

Ukraine (hereinafter – the CC of Ukraine), § 2 of Chapter 35 of the Commercial Code of Ukraine , the Law of Ukraine "On Insurance", other normative legal acts, by rules of certain types of insurance. Thus, according to Article 1 of the Law of Ukraine "On Insurance"[2], insurance is a type of civil legal relations for protection of property interests of natural persons and legal entities in case of occurrence of certain events (insured events) specified by the insurance contract or current legislation, at the expense of monetary funds, formed by insurance payments of natural persons and legal entities (insurance contributions, insurance premiums) and by income from allocation of money from these funds.

Certainly, in the context of European integration processes, the legal regulation of insurance relations should also be based on the norms of the Law of Ukraine "On the National Program for Adaptation of Ukrainian Legislation to the Law of the European Union"[3] and recommendations of such organizations as the International Association of Insurance Supervisory Bodies on insurance activity, Organization for Economic Cooperation and Development as well.

A special place in the domain of insurance legal relations is taken by the EU Directives, which contain norms governing relations of insurance service provision. Therefore, in 1973 and 1979, EU Life Insurance Directives (Directive 73/239/EEC and Directive 79/267/EEC), which have formed the common legal framework for insurance in the EU and are called "first-generation directives", were adopted. The next step towards the development of European insurance legislation was the adoption of "second-generation directives", the main goal of which was the introduction of the principle of freedom as for service provision at the territory of the EU member states. A "single license" for insurance of certain categories of risks, the rules for choosing the law applicable to an insurance contract as well as division of risks for large risks and mass ones was introduced[4].

[2] Про страхування: Закон України від 7.03.1996 р. // Відомості Верховної Ради України. 1996. № 18. Ст. 78.

[3] Про Загальнодержавну програму адаптації законодавства України до законодавства Європейського Союзу: Закон України від 18 березня 2004 р. № 1629-IV // Офіційний вісник України. 2004. № 15. Ст. 1028.

[4] Пацурія Н. Б. Правове регулювання страхування та роздрібних фінансових послуг в Європейському Союзі та в Україні: порівняльно-правовий аналіз / Пацурія Н. Б., Безручко Ю. А., Бєлова О. А. К.: Центр учбової літератури, 2007. С. 5.

In 1992, the "third-generation directives" came into force for insurance other than life insurance (92/49/EEC), as well as life insurance (92/96/EEC). They finally consolidated the principles of freedom of institution and freedom of service provision proclaimed in Rome Treaty in 1957[5]: insured party's right to choose any insurer registered in any EU member state as well as insurance companies' right to conclude insurance contracts in any EU member state[6]. Moreover, in the field of insurance, Directive 2000/26/EC of the European Parliament and of the Council "On the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles holders and obligation performance concerning insurance of such liability" was adopted on May 16, 2000,[7] as well as the Directive 2001/17/EC of the European Parliament and the Council on reorganization and winding up of insurance undertakings on March 19, 2001[8].

It should be mentioned that the system of European law in general is a combination of two interrelated legal subsystems – the integration law and national legislation[9]. At the same time, the EU law closely interacts with international law, the norms of which are enshrined in the constituent treaties on the EU, treaties on the accession of new states to these associations, agreements concluded by the EU with other subjects of international law[10]. Therefore, integration into European and world insurance markets, proclaimed by a national lawmaker, determines the influence and the entry of international law into the field of insurance of our country, absorbing many elements of the world insurance market: terminology, customs, types, insurance rules, etc.

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[5] Договір про створення Європейського економічного співтовариства від 25 березня 1957 р. // Інформаційно – правова система ЛІГА:ЕЛІТ.

[6] Ищенко Н. Г. Страховое право ЕС: система, источники, основные направления развития. URL: http://www.eurasialegal.info/index.php?option=com_content&view=article&id=4542:2015-05-28-11-51-44&catid=195 2013-02-04-08-49-35&Itemid=2 (дата звернення: 04.05.2019).

[7] Директива *2000/26/ЄС Європейського Парламенту та Ради* «Щодо зближення законів держав-членів стосовно страхування цивільної відповідальності власників транспортних засобів та виконання зобов'язання про страхування такої відповідальності» від 16.05.2000 р. URL: http://zakon4.rada.gov.ua/laws/show/994_280 (дата звернення: 04.05.2019).

[8] *Директива 2001/17/ЄС Європейського Парламенту та Ради «Про реорганізацію та ліквідацію страхових підприємств» від 19.03.2001* р. URL: http://zakon3.rada.gov.ua/laws/show/994_225 (дата звернення: 04.05.2019).

[9] Озернюк Г. В. Міжнародні джерела страхового права країн ЄС // Прикарпатський юридичний вісник. 2016. Випуск 6 (15). С. 192.

[10] Татам А. Право Європейського Союзу: підручник. Пер. з англ.; ред. В. І. Муравйов. К.: Абрис; Будапешт: COLPI/OSI, 1998. 423 с.

On June 27, 2014, the economic part of the "Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states on the other hand" was signed during the meeting of the EU Council[11]. Section IV of this Agreement contains provisions defining normative-legal framework for all financial services subject to liberalization (Subsection 6, Financial Services). The Agreement includes, among others, insurance and insurance-related services, in particular, insurance mediation to financial services. On September 16, 2014, the Verkhovna Rada of Ukraine and the European Parliament simultaneously ratified this Agreement[12]. So, it is a source of legal regulation of insurance relations along with the laws of Ukraine.

Taking into account the provisions of the Association Agreement, the aim of harmonization of Ukrainian legislation with the EU law in the insurance field is to provide for an access of all citizens of the EU member states to the widest range of insurance services and to ensure that insurance companies authorized to carry out insurance in the EU member state can operate throughout the EU. In this case, the coordinator of activities on the single insurance market formation is the European Insurance Committee, representing all national unions and associations of insurers[13].

A legal instrument mediating the process of providing an insurance service under the national law and EU law is an insurance contract. Insurance contracts help in mediation of relations arising between persons interested in insuring their life, property, liability and other property interests that do not contradict the current legislation of Ukraine (the insured party), on the one hand, and those who carry out insurance (insurers), on the other hand.

In the Civil Code of Ukraine, an individual Chapter 67 is dedicated to the insurance contract, which contains provisions general to all types of insurance contracts. Thus, in Article 979 of the Civil Code of Ukraine an insurance contract means an agreement whereby one party (the insurer)

[11] Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомно енергії і їхніми державами – членами, з іншої сторони. URL: http://www.kmu. gov.ua/ kmu/control/ru/publish/article?art_ id=246581344& (дата звернення: 04.05.2019).

[12] Заєць О. М. Реформування інституту страхування України з урахуванням положень Угоди про асоціацію з Європейським Союзом. URL: http://er.nau.edu.ua/ bitstream/NAU (дата звернення: 04.05.2019).

[13] Лояк Ф. Єдиний страховий ринок: стан та перспективи // IN RE. 1999. № 4. С. 10.

undertakes, in case of occurrence of a certain event (the insured event), to pay to the other party (the insured party) or to another person specified in the contract, the monetary amount (the insurance payment) and the insured party undertakes to pay insurance payments and to fulfill other terms and conditions of the contract. In turn, according to Article 16 of the Law of Ukraine "On Insurance", an insurance contract is a written agreement between the insurer and the insured party, according to which the insurer undertakes in the event of the insured event to make an insurance payment to the insured or another person specified in the insurance contract in whose favor an insurance contract has been concluded (to provide assistance, to provide service, etc.), and the insured person undertakes to pay insurance payments within certain time limits and to comply with other terms of the contract. The general provisions on insurance apply to various types of insurance contracts in a subsidiary manner, that is, only if the special rules for these contracts do not provide otherwise. At the same time, the detailed regulation of insurance relations does not mean at all that the principle of contract freedom in this field is limited. Most of the rules governing insurance issues have a dispositive nature; they act in the event when the parties have not resolved the relevant issues in a contract.

At the same time, it should be noted that today "the sale of insurance policies" is spread in practice, in which all the terms and conditions of the insurance contract are unilaterally provided by the insurer, the so-called standard forms of the contract (insurance policy) for certain types of insurance. By purchasing such policy, the insured party agrees to the proposed conditions and can not offer own terms of the contract[14]. Thus, an insurance contract is a type of an adhesion agreement. The EU legislation also recognizes an insurance contract as a kind of an adhesion agreement, but at the same time it protects consumers from unfavorable terms of the insurance contract. Thus, Directive 93/13 of the European Union law states that "unfair" terms and conditions of a contract concluded between a service provider and a consumer can not be executed by force in relation to the consumer (for example, through a court), provided that such "unfair terms and condition" were not duly agreed upon by the parties during individual negotiations. The terms and

[14] Харитонов Є. О. Цивільне право України / Є. О. Харитонов, О. І. Харитонова, О. В. Старцев. Вид. 3-тє, переробл. і допов. К.: Істина, 2011. С. 380.

conditions of the contract are not recognized as being properly agreed if the consumer of insurance services has received the previously formed text of the contract and has not had the opportunity to change its content[15].

A feature of the insurance contract is that it belongs to a group of civil legal contracts on service provision. Common features uniting all contractual obligations on service provision in a single group are the object's features: these are intangible services, and in addition, services inseparably connected with the personality of the service provider[16] (in our case, the provision of insurance services is inseparably connected with the insurer's activity), and the beneficial effect of such activity does not appear in the form of a certain tangible material result, as in the case with contractor agreements, but consists in the very process of providing a service[17]. As V. A. Vasiliev rightly notes, when relations in provision of services lead to establishment of legal rights and obligations and, in this connection, entry into the field of private law regulation, we can talk about legally binding relations, the subject of which is the service[18]. Thus, the insurance contract, as an independent type of contract in the group of contracts on service provision, acts as a legal means to reduce the harmful effects of accidental circumstances provided in the insurance contract (destruction of property, loss of working capacity or death of the insured person, occurrence of other insurance risks). Independence of the insurance contract is an indicator that allows distinguishing it from others, externally similar contracts (agency contract, surety contract, contract of storage, loan, and transportation)[19].

The peculiarity of the insurance contract is a list of its essential terms and conditions defined by law. So, according to Article 982 of the Civil Code of Ukraine the essential conditions of the insurance contract are: the subject of the insurance contract, the insured event, the amount of money, within which the insurer is obliged to pay in case of the insured event (insured amount), the amount of insurance payment and terms of

[15] Регулирование договора страхования в рамках права Европейского Союза // Страховое право. 1996. № 2. С. 46.

[16] Цивільне право України. Особлива частина / За ред. О. В. Дзери. К.: Юрінком Інтер, 2010. С. 318.

[17] Бланд Д. Страхование: принципы и практика. М.: НОРМА, 1998. С. 336.

[18] Васильєва В. А. Цивільно-правове регулювання діяльності з надання посередницьких послуг: монографія. Івано-Франківськ: ВДВ ЦІП Прикарпатського національного ун-ту імені Василя Стефаника, 2006. С. 95.

[19] Белоусов Е. Сущность страхования (самостоятельность страхового договора) // Підприємництво, господарство і право. 2002. № 2. С. 23.

payment, the term of the contract and other conditions specified by acts of civil law.

According to Article 982 of the Civil Code of Ukraine one of the most essential conditions of the insurance contract to be agreed necessarily is its subject matter. Without defining exactly the subject matter of the insurance contract, it is not possible to determine its legal nature and content. The lack of a single understanding of the contract subject matter studied can also cause practical problems, including, in particular, the possibility of judicial recognition of contracts as not concluded in which the subject matter has not been clearly defined.

The subject matter of the insurance contract, according to Article 980 of the Civil Code of Ukraine and Article 4 of the Law of Ukraine "On Insurance", may be property interests not contradicting the law and are related to: 1) life, health, working capacity and pension provision (personal insurance); 2) possession, use and disposal of property (property insurance); 3) compensation for damage caused by the insured (liability insurance). However, the determination of the subject matter of this contract, which is such a feature that allows distinguishing it from other contracts, has a contradictory nature and scholars' attitude to such determination of the subject matter is ambiguous. Researchers often only state that the subject matter is one of the essential conditions of the contract, but do not pay due attention to this concept.

The subject matter of any contract is something in which relation person enters in such legal relations and something that they want to achieve. The contract subject matter personifies its legal aim by indicating certain actions with civil law objects (transferring of thing, repairing of a house, manufacturing of products, providing insurance or other services etc.)[20]. Therefore, the agreement of the parties to the contract is based on the obligation, which serves as the contract subject matter mediating legal relations between the insurer and the insured regarding the object of their rights. For that reason, the insurance contract subject matter is reduced not only to property interest. The contract subject matter, and more specifically, the subject of obligation arising from the contract, is actions (or inaction) that must be performed by the binding party (or, accordingly, refrain from their performance).

[20] Стрижак І. В. Проблема визначення поняття «предмет договору» // Вісник Академії митної служби України. Сер.: Право. 2010. № 2. С. 129.

In A. A. Telestakova's opinion, the contract subject matter on service provision is the service itself[21]. N. V. Fedorchenko also notes that the contract subject matter on service provision is the provision of various services according to customer's order, therefore, the direct activity consisting in performance of certain actions or activities by the executor, as well as the beneficial effect from performance of actions or activities of the executor (the effect is meant), which never takes the form of a new thing[22]. Thus, the insurance contract subject matter is the provision of insurance services by the insurer to the insured parties for the protection of their property interests by making an insurance payment (insurance compensation) in case of the occurrence of a particular event (the insured event) associated with causing damage to the insured, the insured person (in the case of insurance of their life, health, property) or to third parties (in the case of insurance of civil liability of the insured, the insured person).

Among the legal acts regulating the relations for service provision in general, the Law of Ukraine "On Protection of Consumer Rights" deserves special attention. According to paragraph 17, part 1 of Article 1 of this law, the service is the executor's activity on provision (transfer) of material or non-material benefits to the consumer specified by the contract that is carried out by an individual order of the consumers to meet their personal needs.

Taking into account that the insurance services according to the Law of Ukraine "On Financial Services and State Regulation of Markets of Financial Services" on July 12, 2001[23] belong to the types of financial services, their sale is only possible provided that the legal act mentioned is observed. So, according to part 5 of Article 1 of the Law of Ukraine "On Financial Services and State Regulation of Markets of Financial Services" a service is transactions with financial assets carried out in the interests of third parties at their own expense or at the expense of these persons, and in cases provided by law – at the expense of borrowed financial funds from other persons, in order to obtain profit or to maintain the real value of financial assets.

[21] Телестакова А. А. Правове регулювання відносин з надання послуг. Навч. посіб. К.: Центр учбової літератури, 2010. С. 51.

[22] Федорченко Н. В. Договірні зобов'язання з надання послуг: проблеми теорії і практики: монографія. К.: НДІ приватного права і підприємництва НАПрН України, 2015. С. 160.

[23] Про фінансові послуги та державне регулювання ринків фінансових послуг: Закон України від 12.07.2001 р. // Відомості Верховної Ради України. 2002. № 1. Ст. 1.

Attributing insurance services to financial ones corresponds to world standards. Thus, in the General Agreement on Trade of Services (GATS) on April 15, 1994, adopted within the framework of the World Trade Organization, where Ukraine is a member, there is an Annex on financial services[24]. For the purposes of this Annex, a financial service is any service of financial nature offered by a financial service supplier of any member state. Financial services include all insurance services, as well as services related to insurance, banking and other financial services (except insurance ones). At the same time, the European Commission, which is the only body of legislative initiative in the EU, approaches the regulation of financial services systematically and applies the single term the "freedom of financial service provision".

According to the Annex of the General Agreement on Trade of Services, insurance services include the following: 1) direct insurance (including co-insurance): life; not related to life insurance, 2) reinsurance and transfer of part of operations (retrocession), 3) insurance mediation, such as brokerage and agency services; 4) auxiliary insurance services, such as consulting, actuarial, risk assessment and claims (losses) settlement services. For consumer of insurance services, the main services in this list are direct insurance. In Ukraine, these services are provided on the basis of an insurance contract. The rest of the services are such services that ensure a high-quality and guaranteed provision of insurance protection and serve this process to a certain extent, therefore, they form the insurance market.

In Article 125 Association Agreements between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, establish the principles of the regulatory framework for all financial services that are subject to liberalization and insurance in particular. It should be noted that in this Agreement, insurance services and their types are fixed in the same manner as in the Annex to the General Agreement on Trade of Services.

Article 125 of Association Agreements between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community

[24] Генеральна угода про торгівлю послугами від 15.04.1994 р. URL: http://zakon4.rada.gov.ua/ laws/show/ 981_017/page2 (дата звернення: 05.05.2019).

and their member states, on the other hand[25], establishes the principles of regulatory framework for all financial services subject to liberalization and insurance services in particular. It should be noted that in this Agreement, insurance services and their types are consolidated in the same manner as in the Annex to the General Agreement on Trade of Services. In connection with the above, there is a necessity for harmonization of national and international normative legal acts regulating the insurance field, first of all, it refers to the Civil Code of Ukraine and the Law of Ukraine "On Insurance", which does not include the list of insurance services provided in the Agreement.

As O. O. Hamankova notes, the insurance service is the financial service in a form of legally executed obligations with provision of insurance protection which is proposed by insurers to potential insured persons at the market[26]. According to G. O. Ilchenko, insurance service is a set of actions of the debtor (the insurer) aimed at satisfaction of property and non-property interests of consumers of insurance services in case of occurrence of certain events (insured events) defined by the insurance contract, at the expense of monetary funds collected to the insurer's funds by the insured persons' paying of insurance payments and receiving other income by the insurer from allocation, investment or other use of money in these funds[27].

The typical features of the insurance service, as one of the types of financial services, based on the provisions of the current legislation of Ukraine, are the following: 1) the insurance service is accompanied by movement of financial assets (money), which provides the performing of relevant financial transactions by a service provider (insurer) (their attraction to deposit, in shares, bonds, mortgage certificates, securities issued by the state and other operations provided for in Article 31 of the Law of Ukraine "On Insurance"); 2) the insurance service is an action with financial assets carried out in the interests of third parties; 3) the insurance service is carried out on a paid basis (payment is made before service provision); 4) the insurance service is provided on the basis of the

[25] Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомної енергії і їхніми державами–членами, з іншої сторони. URL: http://www.kmu.gov.ua/ kmu/control/ru/publish/article?art_id=246581344& (дата звернення: 05.05.2019).

[26] Гаманкова О. О. Ринок страхових послуг України: теорія, методологія, практика: монографія. К.: КНЕУ, 2009. С. 79.

[27] Ільченко Г. О. Цивільно-правовий захист прав споживачів страхових послуг: автореф. дис. … канд. юрид. наук: 12.00.03. К., 2016. С. 10.

insurance contract; 5) the insurance service is a set of financial and accompanying (consulting, actuarial services, services for settling claims (losses) services (operations). In this case, taking into account the provisions of Article 980 of the Civil Code of Ukraine and Article 4 of the Law of Ukraine "On Insurance", types of insurance services are as follows: 1) insurance services in the field of personal insurance, covering property interests of natural persons in relation to life, health, working capacity and pension provision; 2) insurance services in the field of property insurance, where the property interest of the insured is connected with the possession, use and disposal of property, and 3) insurance services in the field of liability insurance, providing insurance protection of property interests, both natural persons and legal entities, connected with possibility of damage to person or property as well as damage caused to a legal entity.

Insurance services are the result of a clearly defined circle of subjects (insurers). The Civil Code of Ukraine defines the insurer as a legal entity specially created for carrying out insurance activity and obtained a license for the insurance activity under the established procedure (Part 1 of Article 984). In order to acquire the status of an insurer, it is necessary to comply with the requirements established by current legislation. Thus, insurance activity in Ukraine is carried out, with a few exceptions, by insurers – residents of Ukraine, which must have at least three participants in its structure. In order to ensure the insurer's solvency and executions of obligations against the insured parties, significant restrictions are imposed on the subject of the insurer's activities, types of insurance, the minimum amount of authorized capital, etc. Thus, the subject of insurer's activity may be insurance, reinsurance and financial activities related to the formation, allocation and management of insurance reserves only[28].

In addition to commercial insurance companies, the subjects of insurance relations are mutual insurance companies. Thus, natural persons and legal entities for the purpose of insurance protection of their property interests may create mutual insurance companies (Article 14 of the Law of Ukraine "On Insurance"), not aimed at obtaining profit, and therefore, they are not the subjects of entrepreneurial activity. This is the main difference between a mutual insurance company and a commercial

[28] Цивільне право України: підручник: у 2 т. / За заг. ред. В. І. Борисової, І. В. Спасибо-Фатєєвої, В. Л. Яроцького. Київ: Юрінком Інтер, 2007. Т. 2. С. 328.

insurance organization, for which the provision of insurance protection is a means of obtaining profit[29].

In the context of the European integration processes taking place in Ukraine, the European experience of legal regulation of non-commercial forms of insurance protection is of great importance. Thus, the operation of mutual insurance companies is regulated by the European Commission Directives, according to which, licenses are not required for mutual companies, in particular, if their activities are of local nature and the annual amount of insurance premiums collected does not exceed 5 million Euro.[30] However, under the legislation of Ukraine, when carrying out insurance activities without a license, a mutual insurance company can not be considered an insurer, since according to Article 2 of the Law of Ukraine "On Insurance" insurers can be only legal entities in any organizational legal form that have received a license to carry out insurance activities. Licensing of mutual insurance companies is determined by the tasks of the state of preventing the emergence of unfair insurers at the insurance market and ensuring protection of insured persons' interests[31]. At the same time, some researchers consider licensing, the main meaning of which is to control the activities of insurers, as an inappropriate form for non-profit insurance companies which fund is formed on the basis of participants' contributions, and the activity is based on the principles of joint responsibility of members for its results and carried out on a nonprofit basis[32].

In 2013, the European Commission Advisory Committee presented a report "On the results of research on current situation and perspectives of mutual insurance in Europe", containing proposals for expanding the activities of mutual companies and their mastering of new sectors in the field of insurance services[33]. It should be noted that, at the Western European insurance market insurance cooperatives also operate along

[29] Адамов А. С. Історичні аспекти взаємного страхування // Актуальні проблеми держави і права. 2009. Вип. 51. С. 253.

[30] Заєць О. М. Реформування інституту страхування України з урахуванням положень угоди про асоціацію з Європейським Союзом // Правова реформа в сучасних умовах: досягнення і перспективи: VI Міжнар. наук-практ. конф. 26 лютого 2016 р. Т. II. К.: Нац. авіац. ун-т, 2016. С. 265.

[31] Міловська Н. В. Корпоративні відносини у сфері взаємного страхування // Право і суспільство. 2017. № 5–2. С. 84.

[32] Дадьков В. Н. Взаимное страхование / В. Н. Дадьков, К. Е. Турбина. М.: Анкил, 2007. С. 55.

[33] European Parliament resolution of 14 March 2013 with recommendations to the Commission on the Statute for a European mutual society (2012/2039(INI). URL: http://ec.europa.eu/enterprise/policies/sme/files/mutuals/prospects_mutuals_ fin_en.pdf (Last accessed: 05.05.2019).

with mutual insurance companies, working on the principles of mutual assistance, solidarity, non-profitability as well. The identity of organizations mentioned is also confirmed by the creation of the Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE), emerged in 2008 on the basis of merger of the International Association of Mutual Insurance Companies (AISAM) and the Association of European Cooperatives and Mutual Insurance Companies (ACME)[34].

The presence of a large number of non-profit insurance organizations in European countries is determined by the reasons relevant for the Ukrainian insurance market as well, namely: the necessity to obtain insurance services at economically reasonable prices by the insured persons, which is facilitated by absence of a commercial component in relations between insurance participants; the democracy and transparency of activities of mutual insurance organizations, the control of which is exercised by its members; taking of specific risks on insurance, from which commercial insurance companies refuse, as a rule. At the same time, as "Strategy for development of the insurance market of Ukraine for 2012 – 2021" states, the national market problems are increasingly generated by unfair competition, insurance fraud, violation of insurance legislation, etc[35]. In spite of this fact, all grounds for the development of mutual insurance companies exist in Ukraine. Moreover, national scholars justify the necessity of drafting and adopting the Law "On Mutual Insurance Companies" by the Verkhovna Rada of Ukraine, which will provide an opportunity to clearly identify organizational, legal and economic foundations for their creation and activities[36]. Mutual insurance as an alternative to commercial insurance provided by law should help in

[34] Mutual Insurance in Figures: Executive summary from the 2010 study produced by AMICE's predecessor association, AISAM. Brussels: Association Internationale des Sociétés d'Assurance Mutuelle – AISAM, 2010.

[35] Стратегія розвитку страхового ринку України на 2012 – 2021 роки. URL: http://ufu.org.ua/ua/about/ctivities/strategic_initiatives/5257 (дата звернення: 05.05.2019) (Заголовок з екрану); Тимошенко І. В. Механізм функціонування товариств взаємного страхування і страхових кооперативів: перспективи розвитку в Україні // Науковий вісник Полтавського університету економіки і торгівлі. 2011. № 6 (51), ч. 2. Економіка, організація і управління підприємством. С. 177.

[36] Навроцький С. А. Страховий захист у сільському господарстві: теорія, методологія, практика: автореф. дис. … док. екон. наук: 08.00.08; Нац. наук. центр «Інститут аграрної економіки УААН. К., 2012. 44 с.; Мачуський В. В. Правове регулювання страхової діяльності в Україні (господарсько-правові аспекти): автореф. дис. … канд. юрид. наук: 12.00.04. К., 2013. 15 с.; Пацурія Н. Б. Страхові правовідносини у сфері господарювання: проблеми теорії і практики: монографія. Ніжин: ТОВ «Видавництво «Аспект-Поліграф», 2013. 504 с.

facilitation of real insurance protection of the insured (natural persons and legal entities) and provide them with quality insurance services.

The second obligatory participant of a contractual insurance obligation is the insured. The insured are legal entities and legally capable natural persons who have concluded insurance contracts with insurers or are the insured in accordance with the current legislation (Part 2, Article 984 of the Civil Code of Ukraine, Article 3 of the Law of Ukraine "On Insurance"). Some scholars consider the insured as consumers of insurance services in contractual insurance relations and accordingly combine issues of exercise and protection of their rights with the exercise and protection of consumer rights. The adoption of the Concept for Protection of Rights of Consumers of Non-Banking Financial Services" by the Cabinet of Ministers of Ukraine contributed to this to a certain extent[37]. A number of international legal instruments regulating consumer protection issues are adopted, in particular the Consumer Protection Charter, adopted by the 25th session of the Consultative Assembly of the European Union on May 17, 1973 (resolution 543)[38] and "Guiding Principles for Protection of Consumer Interests", approved by The General Assembly of the United Nations on April 9, 1985 (resolution 39/248)[39]. The provisions of these international documents were reflected in the Law of Ukraine "On Protection of Consumer Rights" as well[40].

In accordance with clause 22 of Article 1 of the Law of Ukraine "On Protection of Consumer Rights" a consumer is a natural person who purchases, orders, uses or intends to purchase or order products for personal needs not directly related to entrepreneurial activity or performance of duties of a hired employee.

It follows from this definition of the consumer that the consumer can be only a natural person – a person who is a participant in civil relations (thus, it can be both citizens of Ukraine, foreigners and stateless persons). However, the main criterion for distinguishing the consumer from other participants in civil legal relations is the goal of acquiring products aimed

[37] Про схвалення Концепції захисту прав споживачів небанківських фінансових послуг в Україні: Розпорядження Кабінету Міністрів України від 3.09.2009 р. № 1026-р. // Офіційний вісник України. 2009. № 69. С. 30.

[38] Дудла І. О. Захист прав споживачів: навчальний посібник. К.: Центр учбової літератури, 2007. С. 39.

[39] Керівні принципи для захисту інтересів споживачів. Резолюція 39/248 Генеральної Асамблеї ООН від 09.04.1985 р. URL: http://zakon3.rada.gov.ua/laws/show/995_903 (дата звернення: 05.05.2019).

[40] Про захист прав споживачів: Закон України від 12.05.1991 р. // Відомості Верховної Ради УРСР. 1991. № 30. Ст. 379.

at satisfying personal needs not directly related to entrepreneurial activity or performance of duties of a hired employee.

O. Yu. Cherniak, studying the consumer's civil legal status in the context of Ukrainian legislation adaptation to the EU legislation, notes that in the legislation of some states the concept of "the consumer" is used without specifying any definitions, in other states this concept is introduced into legal terminology by judicial practice and/or legal doctrine. Within the framework of the EU there has been a separate concept of consumer rights protection, which can operate without reference to the right of EU member states. Taking into account the established judicial practice, the consumer is considered from the view of protection of a weaker party to the contract. Therefore, the consumer, in the EU law, is recognized as a person (not specified natural person or legal entity) who purchases goods (services) for use, but not for the purpose of personal commercial or professional activity[41].

At the same time, interpretation of concept of a "consumer" as a natural person is not solely Ukrainian, but corresponds to the widespread European practice on this issue. Thus, according to Article 2 of Council Directive 93/13/EEC on 5 April, 1993 on unfair terms in consumer contracts, the consumer is any natural person who, in contracts governed by this Directive, is acting for purposes outside personal professional activity, business, and profession[42]. We should note that when comparing this definition with the definition of the Law of Ukraine "On Protection of Consumer Rights", granting a consumer status to a person does not depend on the nature of their actions performed, but in the Law the consumer must necessarily order, acquire, use something or intend to do so. Moreover, the Directive, unlike the Law, provides for a limited number of non-consumer goals, while all others are considered to be consumer ones. Therefore, according to the Directive, much more people will be subject to consumer protection. At present, there is no legal definition of the term "consumer of insurance services". Insufficient determinacy of the consumer legal status of insurance services creates obstacles in the protection of their rights. This is confirmed by judicial

[41] Черняк О. Ю. Цивільно-правовий статус споживача у контексті адаптації законодавства України до законодавства Європейського Союзу: автореф. дис. ... канд. юрид. наук: 12.00.03; Науково-дослідний інститут приватного права і підприємництва Національної академії правових наук України. К., 2011. С. 7.

[42] Директива Ради 93/13/ЄЕС від 5.04.1993 «Щодо несправедливих умов споживчих договорів // Міністерство юстиції України. URL: http://old.minjust.gov.ua/45878 (дата звернення: 05.05.2019).

practice of considering civil cases arising from insurance contracts[43]. However, in accordance with paragraph 2 of the Resolution of the Plenum of the Supreme Court of Ukraine "On the practice of considering civil cases in claims for consumer rights protection", since the Law of Ukraine "On Protection of Consumer Rights" does not define certain limits of its validity, the courts should keep in mind that the relations, regulated by it, include in particular, those arising from insurance contracts[44].

It should be noted that the consumer of insurance services, as it follows from the Law of Ukraine "On Protection of Consumer Rights", may not only be a natural person who acquires or orders a service for personal needs, but also a natural person who uses such service for these goals (for example, the insured person or beneficiary). Concluding an insurance contract in favor of the third person, the insured person is exactly the user (consumer) of the insurance service, provided that the insurance contract is aimed at satisfying their personal needs. Moreover, according to the letter from the Supreme Court of Ukraine of July 19, 2011, the insurance contract gives the third person the right to demand from the insurer to make an insurance payment in favor of this third person, that is, it gives the beneficiary the rights of the insured party, but does not impose on beneficiary obligations of the latter[45]. Therefore, it is appropriate to consider the consumer of insurance services as a capable natural person, who concludes an insurance contract with the insurer, as well as the natural person in whose interests and in whose favor the insurance contract is concluded, and who receives the insurance service necessary for satisfaction of personal needs, not directly related to the entrepreneurial activity of this natural person or the performance of natural person's duties as a hired employee.

The process of providing an insurance service combines the unity, confrontation and dependence of interests of the parties "insurer – the insured". This can be explained by necessity for a balance between ensuring the financial stability of the insurer on the one hand and

[43] Мельник З. П., Романюк Я. М. Судова практика розгляду цивільних справ, що виникають з договорів страхування // Вісник Верховного Суду України. 2011. № 8(132). С. 12−28; Ханик-Посполітак Р. Ю. Захист прав споживачів фінансових послуг в Україні: правовий аналіз. К.: НУ «Києво-Могилянська академія», 2011. 48 с.

[44] Про практику розгляду цивільних справ за позовами про захист прав споживачів: затв. Постановою Пленуму Верховного Суду України від 12.04.1996 р. № 5. URL: http://zakon1.rada.gov.ua/laws/show/v0005700-96 (дата звернення: 05.05.2019).

[45] Мельник З. П., Романюк Я. М. Судова практика розгляду цивільних справ, що виникають з договорів страхування // Вісник Верховного Суду України. 2011. № 8 (132). С. 21.

providing insurance protection to the insured, on the other. The insurers are interested in minimization of expenses, including at the expense of reduction of insurance payment, and the insured persons are interested in obtaining insurance protection in full. It is possible to add to these features as well that in most cases the consumer of insurance services does not have special knowledge in the field of providing this type of services. Therefore, as L. M. Sokil appropriately notes, it is unprofessional status of the consumer and asymmetry of the parties to the insurance contract that are those additional arguments determining the need for an additional protection mechanism of this category of the insured[46].

The rights of consumers of insurance services, depending on the sources of legal regulation, can be classified into: 1) the rights enshrined in laws (the Civil Code of Ukraine, the Law of Ukraine "On Insurance", etc.), 2) the rights enshrined in by-laws (Decrees and Orders of the Cabinet of Ministers Ukraine, the Decree of the National Commission on State Regulation in the Field of Markets of Financial Services); 3) rights enshrined in local acts (Rules of Insurance); 4) rights enshrined in the insurance contract.

At the stage of concluding the contract, the consumer of insurance services has the right to necessary, available, reliable and timely information about the insurance service, ensuring the possibility of customer's informed and competent choice. Information must be provided prior to the purchase of a service. In addition, the right of consumer insurance services to information does not vanish after the conclusion of an insurance contract; it exists for the entire duration of the contract.

During the insurance contract validity, the consumer of insurance services has the right to: proper quality of service; the right not to disclose information about the customer and customer's property status, except in cases established by law; the right to renew the contract in case of reduction of the insurance risk or increase of the property value; the right of the insured to initiate the application amendments and additions to this agreement; the right to receive a duplicate of the insurance contract in case of its loss; the right to terminate the contract ahead of time in accordance with the conditions specified by the contract and Insurance

[46] Сокіл Л. М. Про необхідність уточнення поняття споживач страхових послуг // Фінанси, облік і аудит. 2012. № 19. С. 183.

rules; the right to appoint beneficiaries to receive insurance payments or to change them before the occurrence of an insured event, etc.

After the insured event, the consumer of insurance services has the right to: timely receiving of insurance payments or insurance indemnity; the right to reimbursement of expenses incurred by the insured at the occurrence of an insured event in order to prevent or reduce losses, if it is provided by terms and conditions of the contract. In turn, in case of improper performance of the insurance contract, the consumer of insurance services has the right to judicial protection of violated, unrecognized or disputed rights or interests, the right to obtain a penalty (fine) in case of untimely obtaining of insurance payments, etc. In turn, the improper performance of the consumer insurance contract is the right to judicial protection of their violated, unrecognized or disputed rights or interests; the right to obtain a penalty (fine, fine) in case of untimely insurance payments, etc.

Therefore, considering the above mentioned, it should be noted that adaptation of Ukrainian legislation to the EU legislation under the conditions of Euro-integration processes in Ukraine will definitely contribute to the development of insurance service provision domain, taking into account the European experience and national peculiarities. Clear normative-legal basis meeting European standards is extremely necessary in provision of effective regulation of insurance relations, strengthening own institutions in the filed of insurance, increasing the standards of insurance service provision, ensuring the proper protection of customers' rights in insurance services etc. The understanding of significance and complexity of the process, successful use of approaches and methods of diversity of European legal field as well as taking into account the experience of the EU member states in this field will bring a necessary positive result.

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PROBLEMS OF ORGANIZED CRIME PREVENTION

Miniailo N. Ye.

INTRODUCTION

In an unstable socio-political, financial and economic situation in the country crime poses a serious threat to social development. It has become one of the negative factors that affects the effectiveness of public authorities and government, undermines the stability of the law and order, protection of rights, freedoms and legitimate interests of citizens, violates the principles of democracy and social justice.

Organized crime in Ukraine is a rather multifaceted phenomenon with general common grounds that are inherent in any organized crime of any country. Nevertheless, it definitely possesses its features received as a result of the historical development of Ukraine, the peculiarities due to its territorial position on the geographical map of the world, the ideological and cultural values of our society. To identify and shape such features one should consider the main historical stages of the formation of Ukrainian organized crime.

In 2011 the President of Ukraine approved the Concept of state policy in the field of fighting organized crime, scheduled by 2017, which states that it is a significant factor in increasing social tension and destabilization of social relations, the emergence of deformation in the field of economic activity, slowing down the pace of economic development of the state. This Concept points to the importance, urgency and necessity of integrated scientific research and analysis, groundwork in the field of the latest scientific development and proposals for reducing its.

Ukraine still has an approach to understanding organized crime through the quantitative expression of the totality of crimes committed in connection with the creation and operation of organized crime groups. At the same time, by improving the state fundamentals of counteraction to organized crime, our state must proceed from the depth of its essence and the diversity of manifestations. An important analysis in this area is the analysis of international standards for the definition of organized crime

and the practice of various European countries to disclose the content of this concept.

Since the late 1990s and early 2000s organized crime in Ukraine has a new stage in its development conditioned by a number of prerequisites. At this time the effectiveness of the law-enforcement system is significantly weakened, facilitated by lengthy and unsystematic reforms of various law enforcement agencies, often with the omission of its priorities counteracting organized crime itself. During a given period in a society the negative consequences of organized crime activity are acutely felt by every person.

The current crime situation in the state indicates the need to improve measures aimed at neutralizing the influence of factors that predetermine the development of organized crime. Organized crime is characterized by a high level of latency, which is indirectly, first and foremost, corrupted by representatives of the state and the judiciary. Understanding of the real situation of crime and organized crime in particular, is necessary for the introduction of adequate legislative measures to counteract them.

Organized crime tries to penetrate the most important spheres of life of society and the state – to the authorities and management, to establish control over financial and industrial groups, separate enterprises, subjects of entrepreneurial activity, lobby their own interests in legislative bodies and public administration. The priority directions of activity of organized groups and criminal organizations are changing, the purpose of which is to receive significant income.

The importance of the formation of detailed statistical data of the results of the fight against organized crime in all its manifestations will be facilitated by its law enforcement agencies in its real assessment in the dynamics. It is the reflection of the real state of organized crime that will improve the system of counteraction to this phenomenon, and will not diminish the role of those law enforcement agencies that are directly fighting its expression, will contribute to an analysis of the quality of their work and the search for methods to improve their effectiveness.

1. Theoretical and legal foundations of crime prevention

Different terms are used in national and foreign legal practice, as well as in legal literature, to designate crime prevention activities and take measures aimed at reducing it, such as «warning», «prevention», «fight»,

«control», «counteraction» , «war», «termination», etc. Each of these concepts causes scientific discussion and is not evaluated as sufficiently defined. We believe that each of them has different content. The most commonly used to explain the nature of such activity in the modern Ukrainian criminological literature are the terms «prevention» and «counteraction». But they are given a different content load. Some researchers of this problem believe that the term «counteraction» in the broad context encompasses prevention and serves to determine the overall impact on crime. It is believed that the concept of «struggle», «counteraction» belongs to the class of generalized, which reproduce the general essence, consisting in the implementation of resistance and does not reveal the essence of prevention.

Based on the foregoing, we believe that the terms «struggle», «war» to a greater extent determine the repressive approach in the field of counteracting crime by the state and is a more narrow area of counteraction, many authors believe that the terms «fight», «war» with crime does not reveal the essence of the anti-criminal efforts of society and the state. Such activities should be defined by the concept of «counteraction to crime». It covers several spheres of influence on crime: general social, criminological, criminal, judicial, etc.

Regarding the use of the term «crime control», which is common in the western countries, especially in the United States, it should be noted that this term did not get used to domestic criminology. But some scientists use it in the sense of «counteraction».

Thus, crime prevention is a complex of socio-legal phenomenon and a concept that reflects the theory and practice of specific government-management activities and private initiatives aimed at preventing the commission of crimes, eliminating their causes and conditions, interrupting the offender. Activity or criminal act committed at different stages of their implementation, bringing the subjects of their commission to criminal liability and applying to them the measures of criminal law influence.

The structure of counteraction to crime contains two complexes (directions) of diverse efforts of society and the state, aimed at restraining crime within the socially permissible limits: 1) prevention of the commission of crimes; 2) response to crimes committed.

The essence and content of each of the directions of crime prevention different researchers understand in their own way. It should be noted that the prevention of crimes is a complex of efforts aimed at eliminating the causes and conditions of the commission of specific criminal acts, so that the subject who intended to commit a crime, got rid of this intention, as well as to stop the crimes. The indicated direction of crime prevention in modern conditions is recognized as the main and more effective in comparison with others – the reaction to already committed crimes.

The reaction to the commited crimes is a complex of criminal legal reaction to criminal manifestations using criminalistic means of disclosure and investigation of crimes, the implementation of punishment and other means of influencing criminal behavior.

Crime prevention in the literal sense means the activity that prevents the commission of crimes. But the content of this activity should also include legal and forensic means of responding and committed crimes that could not be prevented. Thus, counteraction to crime involves the prevention of crimes and the state-legal reaction to their commission.

Prevention of the commission of crimes is an activity functional content and purpose of which is to interfere with the actions of determinants of crime and its manifestations, primarily the causes and conditions of the commission of a crime, by limiting, neutralizing, and, if possible, eliminating their actions, as well as in stopping started crimes.

Depending on the stage of prevention, the prevention is divided into: 1) the prophylaxis of the commission of crimes; 2) the prevention of the commission of crimes; 3) the cessation of the commission of crimes.

The prophylaxis of the commission of crimes in the criminological literature and in practice recognizes the purposeful activity on timely prevention of violations of any social norms, elimination of the causes that give rise to these violations. There are various directions of social prophylaxis: sanitary, technical, medical, veterinary, legal (prevention of offenses and crimes), etc. Legal prophylaxis includes: prophylaxis of disciplinary, administrative, civil and criminal offenses and crime prophylaxis (criminological, criminal, criminal, penitentiary).

A more narrow definition of the concept of «prevention» as a specific direction of a special-criminological warning consists of a set of measures aimed at separate groups and individuals who implement criminal intentions, contemplate the commission of crimes and are positively

perceived as a criminal way of life, in order to discredit criminal behavior, to refuse criminal motivation and intent, or the continuation of criminal activity.

Crime prevention is a set of measures aimed at separate groups or specific individuals who commit criminal intentions, contemplate the commission of a crime; elimination of criminogenic factors that cause the formation of a criminal motive before the crime is committed.

The cessation of criminal expressions is defined as a set of measures aimed at preventing the completion of the crime.

Thus, the theory of counteraction and prevention of crime as a kind of social and preventive activity includes measures aimed at limiting the factors, causes and conditions of crime and bringing the perpetrators to criminal responsibility. It is an integral part of the subject of criminology and defines the main task of this science – theoretically to substantiate and develop proposals on combating crime.

Crime prevention is an active influence on its causes and conditions at various levels of social life. In criminology there are three levels of counteraction and prevention of crime: general social, special-criminological and individual.

The general social level of counteraction of crime is a combination of economic, cultural, educational, ideological, organizational and managerial, legal, technical measures, usually of a long-term nature, which ensure the proper functioning and development of the existing system of social relations and are indirectly aimed at countering crime.

These measures are developed and implemented by state authorities and management not with the purpose of direct counteraction of crimes but with the aim of solving current and future tasks of socio-economic development of the state, elimination of contradictions in public life. But indirectly they are aimed at eliminating negative phenomena and processes in various spheres of public life, which determine crime as a consequence. With criminality they have predominantly correlation links. National counteraction of crime is based on the condition of timely solving of sharp social contradictions, since it is impossible to eliminate secondary phenomena without removing the main negative phenomena with which they are inextricably linked. And this is clearly traceable in the light of the economic and social reform that occurs inconsistently with the aggravation of global social contradictions in all spheres of public life.

The special-crime level of counteraction of crime is an aggregate of complementary measures complementing each other, the content of which is the activity of state bodies, public organizations and citizens in the development and implementation of measures specifically aimed at identifying, eliminating and neutralizing the negative circumstances that make the commission crimes and prevention of crime at different stages of the development of criminal activity. Special-criminological counteraction of crime is a professional activity that requires the use of special knowledge and methods of criminology, special planning, forecasting and management activities. It consists of the following independent areas: elimination or neutralization of causes and conditions conducive to the commission of crimes (criminological prophylaxis); termination of offenses and crimes; correction of persons who committed a crime; prevention of relapse; medical and psychiatric prevention.

The specially-criminological direction of combating crime is a complex target, closely related to social prevention in the broad sense. In general, social prevention involves the use of various measures that impede the development of anti-social forms of behavior. It is based on the recommendations of most social, natural and technical sciences, and in its essence identical to the general social prevention of crime, including a set of measures of education, observation, legal influence and treatment.

In the development of special-criminological measures for the prevention of crime, criminology, of course, uses knowledge and recommendations from other areas of social prophylaxis. But they do it purposefully, in relation to specific criminal phenomena and processes. Measures of social prevention are oriented on the whole population and aimed at ensuring social health of society. Therefore, these measures of special-criminological crime prevention are only part of the complex measures of social prevention in society.

Thus, criminological prophylaxis is a combination of activities with its identification and elimination of national and subjective conditions that give rise to crime, and also contribute to the growth of specific crimes. Depending on the phenomena and processes these preventive measures are divided into: review, restriction, elimination, protection.

Prophylaxis of prevention covers the activities of various subjects, consists of a set of measures, techniques and methods aimed at preventing the emergence and spread of various criminal phenomena and processes.

Prophylaxis of prevention contains a wide range of measures: socio-economic, ideological, legal, social and hygienic (for example, maternal protection, measures aimed at creating conditions for the upbringing of children, moral formation of an individual, ensuring proper working conditions, leisure, control and permits, etc.)

Under the prophylaxis of restriction, the activity of the subjects of prophylaxis, is creating conditions that hinder the spread of criminogenic objects at certain levels of social life, the determination of certain types of crimes, the formation of typological features of different categories of criminals.

The main place in the prevention system of elimination, which is carried out mainly by law enforcement agencies, are measures: procedural (submission of the investigator, separate decision of the courts), operational (liquidation of «Malin» and drones); informational and criminological (analysis of the crime situation), administrative (removal of moonshops, weapons, etc.).

Prophylaxis of prevention is a set of measures aimed at increasing the level of protection and safety of material objects and individuals from criminal encroachments. It creates external barriers to encroach upon the values protected by society. Prophylaxis of protection is widely used in practice. These are technical means of protection, branding and individualization of objects, public awareness about means and methods of encroachment and protection (forensic, victimological prevention).

Measures of special-criminological prevention are quite diverse. By scale these measures are divided into: national, regional, local and individual. State-wide – these are measures aimed at eliminating criminal phenomena in the country as a whole. Their implementation is due to the goal of implementing a single criminological policy in the state. Regional – these are measures aimed at eliminating or neutralizing criminogenic phenomena in certain regions. Local – it measures on the scale of individual objects or microgroups (enterprise, family).

Individual – these are measures for specific individuals inclined to commit offenses and crimes. They apply to people for whom there is a reasonable assumption, a forecast and the legal basis that this person is likely to commit a crime. Individual crime prevention is the preventive action of state and non-state bodies to prevent a crime from being

committed by a specific person from which it is most likely to be expected to commit a crime.

Consequently, the object of this activity is: behavior and lifestyle of individuals with a high probability of committing a crime; anti-social orientation; psychophysical features of individuals; unfavorable environmental conditions; other long-term negative circumstances that determine the crime situation.

To determine the range of people who need individual prevention it is necessary to have factual, legal and criminological grounds. The actual reasons are the presence of antisocial behavior with its real manifestations. The legal basis is the regulation of preventive activities by law. Criminological grounds should be understood as the high degree of probability of committing a crime by a particular person.

Directions of individual prevention of crimes are: measures of persuasion, social assistance and coercion. Measures of persuasion – a set of educational activities aimed at forming in the person abandonment of criminal behavior, criminal intent, anti-social installations. These are conversations, listening to lectures on legal topics, individual or collective patronage, participation in community activities. Social assistance measures are employment, improvement of living conditions, changing lifestyle, raising the level of education, obtaining a specialty, establishing useful contacts, etc. Compulsion involves adverse consequences for the person, physical, material and technical. For example, control over the conduct of convicts, administrative supervision, arrest and administrative detention, fines, cessation of vagrancy and begging and so on.

By nature special-criminological activities are subdivided into: socio-economic; socio-demographic; ideological political cultural and educational; organizational and managerial; technical control-permit; legal; therapeutic and prophylactic.

Differentiation of special-criminological measures by subjects is carried out depending on the competence and functional capabilities of the subjects. By content the activity of each subject of prevention is determined by its functional responsibilities.

To subjects of counteraction and prevention of crime belong state bodies, officials, public organizations, social groups, separate citizens, having the corresponding competence, rights and duties, whose activity in accordance with the current legislation is aimed at the development and

implementation of activities related with the prevention, detection, limitation and elimination of criminal phenomena and processes generating crime. These include:

• the bodies administering the system of special-criminological counteraction and prevention of crimes determine the main directions, measures, tasks, forms of counteraction and prevention, the criminological policy of the state, plan, direct, coordinate and control it (state authorities and administration, local self-government bodies, executive and regulatory bodies);

• state bodies that carry out special measures for countering and preventing crime, by virtue of their status, and this activity is assigned to their main tasks and functions (Ministry of Internal Affairs, SBU, prosecutor's office, courts, control bodies);

• bodies and organizations whose activities indirectly influence the prevention of crimes (general and economic management bodies, information, statistical, medical, educational, cultural-educational);

• public organizations, associations of citizens and individual citizens (trade unions, public guardians of order, parties, religious organizations).

Among the subjects of special-crime prevention are local authorities and their executive and regulatory bodies, competent to carry out organizational and managerial functions for the prevention of crime, to organize and coordinate the work of the entities of the crime prevention system, to monitor the implementation of the decisions taken in the subordinate territory. To increase counteraction of crime they can form both permanent and temporary bodies. Various public organizations, workers' groups, officials, individual citizens (consumer protection society, environmental movement, etc.) play an active role in preventing crimes.

Among the subjects for which special-criminological counteraction and prevention are the main function or one of the functions are law-enforcement bodies, their units and services. These are the bodies of internal affairs, state security, court, prosecutor's office, arbitration, services for minors, correctional labor colonies, and the system of controlling state bodies.

Common to them is that the function of counteraction and prevention of crimes is allocated in an independent direction of activity. The content

of this function is to identify and eliminate criminal phenomena, prevent crime, prevent and stop crimes, identify and eliminate causes and conditions conducive to crime, prevent recidivism and control the implementation of measures to combat crime.

Individuals implement preventive measures both in the framework of fulfilling certain civic obligations (upbringing of children) and public order (party, trade union), and in the personal initiative of countering various crimes, signaling to the competent authorities about criminal phenomena and criminal objects, promote the activities of law enforcement bodies (public assistant district).

The close link between the specialized actors in combating crime and the family, the population and public organizations provides a fairly high effectiveness of preventive practices. Family, community, religious organizations, prevention groups, cossack organizations, foundations, movements and many other organizations of public control are engaged in educational preventive work. Suffice it to say that more than two hundred non-governmental organizations declared in their statutory documents the work on preventing and combating corruption and crime. All these subjects are able to solve the problems of early and post-criminal prevention.

As for individual citizens in the Constitution of Ukraine, other legislative acts (criminal, criminal procedure, administrative legislation) there are norms that establish the duty and legitimacy of actions of citizens in protecting the interests of the state, their own legitimate interests and rights, the rights of other citizens from criminal encroachments.

Important for a complete analysis of crime is its information and analytical support. It is based on the legal, organizational, technical and methodological basis of purposeful activities on the collection, processing, storage, use of information necessary for the effective functioning of the system of counteraction to crime.

It involves the availability of information on the state, dynamics and structure of crimes, the impact on crime of the socio-economic status of the state, the activities of crime prevention actors. It should be noted that it is necessary to obtain sufficiently complete information that would reproduce the real state of crime in the country and the factors that determine it.

In the context of the formation of an effective counteraction of crime, latent crime (from the Latin word «latens» – hidden and invisible) is of great importance, which is a set of actually committed crimes that, due to various circumstances, have not been reflected in official criminal statistics. The negative social consequences of latent crime are as follows. Violation of one of the fundamental principles of social justice – the inevitability of punishment for the crime committed. The untimely occurrence of responsibility for the crime committed encourages the commission of new crimes, which creates favorable conditions for recurrent, professional crime and prolonged activity of organized crime groups. In the morally-psychological aspect, the high level of latent crime forms the legal nihilism of citizens, doubts about the effectiveness of law enforcement agencies and their capabilities in the protection of life, health, property and other benefits. Latent criminality also has a negative impact on the development of criminal law and criminological policies, strategies and tactics of counteracting crime, undermining measures of social policy of the state.

The level of latent crime depends on many socio-economic, psychological, organizational and managerial factors. Among the main ones are the following: 1) the nature and prevalence of circumstances in connection with which the crimes are concealed; 2) the state of legal consciousness and social activity of the population, aimed at counteracting crime; 3) the types and methods of committing crimes, the nature of their gravity (more serious crimes less latent, less severe – more latent); 4) the activity of law enforcement agencies in detecting crimes and criteria for assessing their activities; 5) stability of the legislation and judicial practice; 6) observance of the rule of law by state bodies and officials.

Now, in the context of intensive integration processes in the world, all countries are interested in the possibility to compare and assess the statistical indicators of crime in a variety of ways. Unfortunately, the indicators of criminal statistics in most countries are not comparable for various reasons – objective and subjective. For objective reasons, first of all, various criminal-procedural forms of carrying out of inquiry, investigation and judicial consideration of criminal cases, as well as the procedure of accounting and methodology of calculation of indicators, can be attributed.

To the subjective – the interest of individual power structures and political forces in certain quantitative characteristics of the criminal situation in the country at the moment, which is most clearly illustrated by statistical data. Very often, subjective factors are decisive at any stage of registration and consideration of criminal-law phenomena.

It is no coincidence that the problems of improving statistical accounting have been repeatedly discussed at various UN congresses dealing with crime prevention issues, which constantly emphasized that only on the basis of statistical data are possible in-depth comparisons of trends in the development of economic crime in different countries and regions of the world.

Detection of latent crimes is a difficult task but quite real. In law enforcement agencies latent crimes are detected through the use of operational measures. Criminology knows a number of indirect methods for detecting latent crime. The simplest of them are reduced to various types of polls by using anonymous questionnaires. The main methods of detecting the level of latency of crimes are: to identify the level of victimologization of the population; analysis of complaints, applications of citizens coming to law enforcement agencies; analysis of messages in mass media; analysis of documents, materials of inspection of controlling bodies; study of data of forensic medical examination, polyclinic, hospitals; expert estimation method; analysis of actions of individual people (building of a house, sale on the markets of stolen products); analysis of technical and economic indicators of enterprises (raw materials – output, shortages and their causes).

Criminal statistics in most countries are decentralized and do not have a clear structural system, as in our country. The second feature is due to the lack of a single methodology and system for collecting data on crimes. The third feature is that information about crimes is collected by many different organizations. A widespread system of private statistical bodies serving primarily private companies, and sometimes executing orders from state statistical bodies. The fourth feature is the availability of a large amount of statistical information, its unsystematic nature and inequality, which prevents state statistical bodies from verifying the authenticity of statistical data.

Criminal statistics of crime of each state reproduces the specific features of its criminal law, process, judicial system, therefore, when

studying the indicators of international criminal statistics on crimes, one should first of all bear in mind the differences of criminal legislation. In some countries criminal offenses are subdivided into crimes, misdemeanors and offenses. In others – for crimes and offenses.

In the third one – on criminal acts which are prosecuted under the indictment or without such, etc. The range of acts that are defined as economic or property crimes, as well as committed by organized groups, varies considerably. There are features and in the legal definition of individual concepts: complicity, attempt to commit a crime, relapse, and many others. Significant difference in the definition of the composition of such crimes. It is also necessary to take into account the degree of activity of the police and the court in the detection of crimes, as well as criminal-procedural law and the organization of a system of counteracting crime in individual countries.

However, in spite of all these difficulties, the comparative and statistical study of crime on an international scale provides an opportunity to identify the main trends, the dynamics of this crime in the world, its structure and the peculiarities of regional manifestations. It is important to use for this an analysis of the size of the damage from the commission of crimes in different countries, materials of economic, demographic socio-cultural statistics, etc.

2. Counteraction of organized crime

The emergence, existence, spread and reproduction of organized crime is primarily due to the aggravation of contradictions in the development of society during the period of market transformation. These contradictions are the main crime-causing factors that determine the existence and reproduction of organized crime. Factors that determine the occurrence and existence of organized crime can be divided into objective and subjective. Objectives include factors that are conditioned by socio-economic features of the functioning of society. To subjective ones are those caused by the disadvantages of organizing the work of operational units to combat them.

Objective factors of the emergence and existence of organized criminal groups is the growth of property stratification of the population; complication of the crime situation in the conditions of crisis phenomena in the economy; increasing activity of the shadow economy; changes in

the legal consciousness of most of the population; a simplified approach to the study and analysis of the development of organized crime; the absence of an effective legislative framework for the fight against organized crime.

Subjective factors are: reducing the role of preventive measures; organizational and tactical miscalculations in the field of organization and implementation of counteraction to crime; systematic rotation and fluidity of operational composition; shortcomings of the professional training of operatives; miscalculations in determining the main directions in the fight against crime, low quality of operational overlap; low-quality work on operational accounting; unsatisfactory state of organization of interaction of operational units with investigators and supervisory bodies; disregarding the peculiarities of regional conditions; low level of control over the way of life and criminal activity of leaders of criminal formations and their active members; absence of offensive in the fight against organized crime; underestimating the professionalization and consolidation of criminal activity; disadvantages of informational and analytical work.

By the content they can be classified into economic, political, social, moral, psychological, legal and organizational and managerial factors of the existence, spread and reproduction of organized crime. Economic factors include: a systemic crisis in the economy, miscalculations in the strategy of privatization of state property, an economically unjustified full liberalization of prices, weak control of the state and society by the activity of individual economic entities, especially large monopoly enterprises, banking institutions, active activity of fictitious enterprises, high level of shadow economy, opacity of most segments of the market, first of all, fuel and energy, agro-industrial, etc.

Today the shadow economy is, in fact, an extensive system of obtaining extra profits which has its own shadow leaders and the specialization of individual segments. According to experts, the amount of illegal shadow economy is more than 50%. It is usually in the interests of the criminal oligarchic clans of Ukraine, and not in the interests of society and the state. Tens of millions of Ukrainian hryvnas, not controlled by the banking system, go through the shadow sector every day.

In itself, the phenomenon of a shadow economy is inherent in all economic systems without exception but more significant is its volume,

that in case of exceeding certain limits becomes of large scale and extremely dangerously affects all spheres of public life, instigates the spread and reproduction of organized crime.

An important economic factor is the erroneousness of the chosen direction of economic reform, the implementation of which led to the formation of a system that, by its existence and peculiarities of manifestations, generates a significant number of negative criminal factors contributing to the further spread and reproduction of organized crime, in contrast to, conventionally speaking, «normal» market economy. Of course, the last also contains a number of objective prerequisites for the existence of organized crime. But in the presence of civilized market relations they have reliable barriers.

The political factors of the spread of organized crime should be considered the growth of the corruption of the state apparatus and the use of immoral and sometimes illegal methods in political activity, the influence of criminal oligarchic clans on the functioning of the political system as a whole and certain political institutions.

One of the main social factors should be social apathy of the population, despondency to positive changes. To confirm the state of social apathy, it is not even necessary to carry out special studies or provide empirical data, because every citizen of Ukraine, unfortunately, can observe this condition every day in everyday life. An over-the-top confirmation of this can be the almost complete lack of response from the public to such phenomena as unprecedented increase in utility tariffs, arbitrary power failure by energy generating companies of entire neighborhoods. In countries that, from the point of view of the majority of Ukraine’s population, are considered democratic and civilized, such facts would inevitably lead to violent protests.

A significant social factor in the existence, spread and reproduction of organized crime is the sharp stratification of society into extremely poor and very rich, low living standards of most social strata. At the same time, a small percentage of people live at extremely high standards of consumption, characteristic of the most economically developed countries, with the apparent lack of the majority of the population to achieve this legitimate.

Another social factor should be called the threat of organized crime, not only traditionally criminal, but also other spheres of life. In foreign

countries, such as the United States and Western Europe, organized crime controls only criminal activity such as drug trafficking, weapons, trafficking in human beings, car theft, and smuggling. For legal business, members of organized criminal groups attempt to penetrate only in order to legalize profits from criminal activities or gradually withdraw from criminal activity. Organized crime in Ukraine and in many post-Soviet countries not only penetrates into most legal areas of activity, but even controls them. At this time, it is difficult to name at least one area of life that would not be exposed to organized crime.

Under the moral and psychological factors should be understood first of all catastrophic decline in morality in society, the devaluation of spiritual values. Much of the population was struck by purely consumer psychology. Representatives of criminal oligarchic clans and corrupt officials who publicly demonstrate their disparaging attitude to the law and law enforcement agencies began to identify moral norms in society.

An important moral and psychological factor in the existence, distribution and reproduction of organized crime is the domination in the social consciousness of the cult of enrichment, profit over the minimum labor costs. In this case, the enrichment is cultivated as much as possible, by any means, at any cost. In addition, the marked cult of overproduct has led to the existence of economic disproportion in the form of priority mediation over production. To eliminate this factor, it is necessary to involve economists and develop and legislatively establish the limits of the profitability of goods and services, and review the criteria for determining their cost.

A significant moral and psychological factor is the preferential treatment of the population of the so-called mafia life style, a peculiar effect of accustoming the public consciousness to organized crime. The noted effect of addiction is potentially dangerous by the threat of total criminalization of public consciousness, which results in almost the justification of criminals, the romanticization of a criminal way of life, the formation of greater trust in criminals, than to the authorities.

Another moral and psychological factor is the establishment in the public consciousness of the stereotype of «social proximity» of the criminal element, which was formed as a result of prolonged propaganda of such «proximity» of the criminal element in the years of totalitarianism. It created a sympathetic attitude to it, infiltrates the

subculture of the criminal environment into public consciousness on a threatening scale. This is also facilitated by the proliferation and production of works that magnify the image of the offender. He is depicted as such a savior knight and a wise philanthropist, an unjustly imprisoned defender of individual freedom, a vibrant, creative personality.

Among the moral and psychological factors should also be called the psychological proximity of the business environment to organized criminalistics. This is a logical consequence of their moral and psychological unity. It is conditioned by the existence in the Soviet times of criminal responsibility for private entrepreneurship, commercial mediation and other economic crimes, which are now recognized as socially useful activities. This made people who engaged in such activities as criminals, facilitated their involvement in the criminal system of public relations.

Among the legal factors of the spread and reproduction of organized crime can be called such as the imperfection of the criminal legal regulation of counteraction to organized crime; internal contradiction and inconsistency of the system of legislation, in particular economic and tax, and the unsatisfactory state of legislative regulation of certain spheres of activity, especially economic ones, including the imperfection of the provisions of certain legislative acts regulating crime counteraction; criminogenicity of some legislative acts, non-implementation of their criminological expertise, etc.

Organizational and managerial factors that determine the existence, distribution and reproduction of organized crime are manifested in improper control of the use of national wealth, unwarranted intervention of officials in economic activity, and the disadvantages of the entire economic mechanism.

The state of counteraction to organized crime negatively reflects the conditions of organizational and managerial nature, which deal with the shortcomings of law enforcement activities of law enforcement and other state bodies. Among them should be: administrative failures in the organization of operational and service activities of law enforcement agencies; liberalism when sentencing members of organized criminal groups; shortcomings of operational search work; insufficient level of coordination in the fight against organized crime between individual law

enforcement agencies; inadequate logistical, resource and personnel support of units for combating organized crime.

It should also be noted that inconsistency of actions and departmental corporate law enforcement bodies. It is only possible to counteract this by means of a clear legislative definition of the competence of various agencies in the field of combating organized crime with a mandatory warning about the prohibition of its arbitrary redistribution at the level of various types of by-laws.

An important negative circumstance is the bureaucratization of special units for combating organized crime and, in general, the system of law enforcement agencies.

The problem of resource support for crime prevention, especially organized, remains extremely relevant. In today's situation, when law enforcement officers, especially the governing body, have to perform more different kinds of economic activities than direct functions of the office to ensure the minimum necessary existence and functioning of the law-enforcement system, the importance of this issue is still increasing. Savings on the allocation of funds to the needs of law enforcement agencies cost the state too much, cause budget losses and generate other social problems.

Low legal and social security of law enforcement officers, including special units for combating organized crime. Infinite attempts to save budget funds on the abolition of additional social guarantees to law enforcement officers lead to negative events such as staff turnover and social tensions in law enforcement agencies that can not have a positive impact on crime counteraction.

Corruption plays a special role in contributing to the existence, spread and restoration of organized crime. Its devastating impact is felt throughout the world. This is due to the fact that power and management powers represent a great temptation for those who are prone to unjust enrichment. This is used by organized crime, unlawfully approaching the bureaucracy. It should be emphasized that some civil servants themselves often go towards criminal elements, wanting to receive money or material benefits for their services.

The above list of the main factors that determine the existence, distribution and reproduction of organized crime, determines the nature and content of measures to counteract and prevent it.

General social measures, as noted in the criminological literature, include a radical reorganization of the country's economy, aimed at making impossible the functioning of the shadow economy, the penetration of organized crime into the sphere of the legal economy, the improvement of tax legislation, the impossibility of financial-banking and foreign economic crime.

The strategy of combating organized crime in modern conditions is to implement long-term measures aimed at eliminating the causes and conditions of this negative phenomenon, simultaneously eliminating specific organized criminal groups and organizations and limiting the field of their activities. Reliable barriers should be placed on the penetration of organized crime into the authorities and authorities, law enforcement structures, and the economy. To implement such a strategy, it is necessary that the counteraction to organized crime has indeed become the object of targeted state policy, and not only used during election campaigns. Necessary real political will of state leaders and broad support for civil society.

An important area of counteraction should be the taking of decisive measures aimed at eradicating organized crime from the legal sector of the Ukrainian economy, combined with steps towards its de-institutionalization. The activities of law enforcement agencies and special services of the state are able to substantially reduce the economic and financial base of organized crime, since the most effective way to dispose of organized criminal groups is to detect and distort cash flows that ensure their functioning.

At the same time, it is necessary to exercise much more determination in the case of seizure of property if there is a suspicion that it was obtained as a result of criminal activity. It is necessary to provide a real guarantee of the security of citizens who reported suspicions about the activities of organized criminal groups or the source of income.

In recent years, the problem of ensuring the principle of inevitability of the punishment of organized criminal groups is very relevant. While the level of organized crime's latency is high, and the disclosure of these crimes, on the contrary, is low and the punishment for their commissioning is purely symbolic, all special-criminological activities aimed at counteracting organized crime will yield insignificant results.

The urgent task is also the moral improvement of society, raising the level of general culture and justice of the population.

Improving the legal framework is important for activating the work on counteraction to organized crime. This is constantly emphasized by scholars and practitioners. Such proposals do not mean at all that there are no criminal-law norms in the state that regulate criminal responsibility for crimes committed by organized criminal groups. They certainly were and are. It is about their improvement, the creation of an optimal criminal-legal framework in modern conditions: an offensive, directed against members of organized criminal groups and factors that determine the commission of their crimes.

The counteraction to organized crime should also involve measures of a criminal-procedural nature that deal with the regulation of the procedure for investigating criminal cases concerning the crimes of members of organized groups and criminal organizations, trial, execution of sentences, improvement of the work of the investigating staff, etc.

An important reserve of counteraction to organized crime should be active cooperation of operational units of law enforcement with civil society organizations and individual citizens.

The state of modern organized crime and corruption at different levels of government and administration requires the use by law enforcement of new, more effective, special-criminological measures, methods and methods of counteraction. From society as a whole and from special units to combat organized crime, it is required to create an effective and high-quality system for combating organized crime. Only active and offensive actions using all the means provided by law, a well-balanced and professionally competent organization of operational-search activities, interaction with investigative units, the prosecutor’s office and the court will ensure the fulfillment of the tasks of counteraction to organized crime.

Among the special-criminological measures, special attention deserves the issue of coordination of efforts of state bodies for counteraction to organized crime. After the elimination of the Coordinating Committee on Combating Crime under the President of Ukraine, the National Security and Defense Council of Ukraine and the Prosecutor’s Office of Ukraine carry out functions for coordinating this

activity. However, it should be noted that the activities of these bodies lack decisiveness and offensive character.

It is worth taking the experience and technology of combating organized crime, tested in other states, in particular in the United States (the allocation of significant financial and human resources, the use of modern methods of electronic surveillance, the involvement of secret employees, gradual but steady and qualitative accumulation of evidence in the case, etc.).

It is also possible to use the positive experience of creating so-called regional and interregional «shock groups» as part of the staff of various law enforcement agencies. Such structures in the United States are created to investigate the activities of specific organized groups. The period of their activities is not regulated in advance, that is, they must work until they have solved their task of tactical and procedural nature.

In the conditions of globalization of the global economy, the criminogenic processes become global. They determine organized crime, which is becoming more aggressive, has long crossed the borders of national states and has a transnational character. It is entirely natural that organized crime has become a matter of serious concern to the international community.

Since the mid-1970s, at the UN level, and later in the Council of Europe, a number of international legal acts have been adopted that formulate strategic principles for combating organized crime. The most important of these are the UN Convention against Transnational Organized Crime of 15 November 2000 and its additional protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Protocol against the smuggling of migrants by land, sea and air; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 8 November 1990, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005, European Union Strategy for the beginning of the new millennium «Prevention and control of organized crime»; Framework Decision of the Council of the European Union on combating fraud and counterfeiting of non-cash means of payment, dated May 28, 2001, Framework Decision of the Council of the EU of June 13, 2002 «On the European Arrest Warrant and the Transfers of Persons between Member States» and others.

Appropriate congresses, seminars on crime prevention and the treatment of offenders were held, in which issues of activation of counteraction to organized crime were raised. Such events were held in Havana (1990), Suzdal (October 1991), Palermo (2000).

A characteristic feature of international treaties in the field of counteraction to organized crime is a fairly wide range of States parties. For example, 168 states have joined the United Nations Convention on Narcotic Drugs, the OOEN Convention on Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances has exceeded 158. Ukraine has also concluded dozens of interstate, bilateral treaties on legal aid in criminal matters.

In order to successfully fight organized crime, joint efforts are needed to counteract criminal gangs across the European space, joint mobilization of law enforcement and judicial authorities, balanced implementation of measures and an integrated strategy that sets priorities and clear goals for the implementation of relevant action plans.

In the above mentioned international legal documents it is recognized as necessary:

– carry out intergovernmental cooperation in the field of counteraction to organized crime, exchange of information between law enforcement bodies about the activities of organized criminal groups;

– establish operational-technical cooperation in various spheres of counteraction to organized crime;

– expand advisory services in order to exchange experience and new achievements in the fight against organized crime;

– improve customs, passport and transport control at the crossing of the border and the implementation of international supplies of goods;

– create data banks for participants of transnational organized crime;

– involve financial institutions in the implementation of national, regional and international programs for the prevention and counteraction of organized crime;

– provide mutual assistance in the field of criminal justice, extradition and extradition;

– constantly carry out measures aimed at combating money laundering, trafficking, smuggling, trafficking in human beings, international terrorism, piracy, environmental crimes, etc.;

– intensify activities to detect suspicious banking transactions involving the transfer of money abroad;

– take effective measures and adopt appropriate laws aimed at resolute counteraction to corruption, which promotes the activities of organized criminal groups;

– develop and improve specific training programs for law enforcement personnel, and apply other mechanisms of international cooperation in combating organized crime.

The main objective of international cooperation is to ensure that counteraction to organized crime is adequately secured by the activities of state institutions and coordinated at the interstate level.

CONCLUSIONS

Expressions of organized crime cause significant damage to the state and its institutions, and in general to its society. The need for in-depth knowledge of this phenomenon is due to the urgent need to reduce the negative effects of its manifestation. In Ukraine the epressions of organized crime also have a significant negative impact, especially in such a difficult time for the country to reform and find new ways to build it. Underestimation of the threats posed by organized crime can have fatal consequences for the whole society.

Ukraine on the way of active counteraction to organized crime, and now implementing and reforming the law enforcement and judicial systems, should maintain their effectiveness in the fight against and fight against crime, create the legal basis for qualitative interaction among themselves in achieving the ultimate goal. One of the priorities of its domestic policy should be the desire to effectively counter organized crime and minimize the negative consequences for society of its activities.

In general, the study of issues of counteraction to organized crime should be carried out in the direction of improving the legal framework for bringing to justice its representatives. Reducing the indicators of manifestations of organized crime in Ukraine indicates that criminal gangs change the tactics of their activities, which greatly complicates their detection.

In order to form an effective system for counteracting of organized crime, scientific development should be carried out, in particular, in order to systematize and to simplify the criminal-law basis of counteraction to organized crime, to make it more precise, avoiding evaluative concepts and opportunities to further ambiguous interpretation in application.

Investigation of the processes of determination of crime has a very practical significance. In general, in criminological science, the theory of determination and factors that determine the phenomenon of crime contributed to the development of major groups of factors that affect crime: social, economic, legal, organizational and managerial; cultural-ideological, moral, political, etc. It contributes to an effective further analysis of the state of crime for forming ways of confronting a scientifically sound, rational and calculated outcome. The importance of knowing the determination of crime is conditioned by the need to develop and prevent effective countermeasures and combating this multifaceted phenomenon.

The significance of the socio-economic factors of state development in their influence on the genesis of organized crime can not be overestimated. Organized crime continually holds the heart on the pulse of social and economic life of the country. If you have only the slightest opportunity to use certain circumstances for your own benefit, it will definitely benefit them. A clear, sustainable and systematic legal development of the country's social and economic life, together with effective crime prevention measures, can provide the basis for reducing the negative impact of its activities on the territory of our country.

SUMMARY

The article is devoted to the problems of counteraction of organized crime in Ukraine. The research of the theoretical and legal foundations of counteraction to crime was conducted, attention was paid to certain aspects of counteraction. On the way of active counteraction to organized crime our state is currently reforming the law enforcement and judicial systems, introducing amendments to the current legislation. The current crime situation in the state indicates the need to improve measures aimed at neutralizing the influence of factors that predetermine the development of organized crime. Among the legal factors of the spread and reproduction of organized crime can be called such as the imperfection of the criminal legal regulation of counteraction to organized crime; internal contradiction and inconsistency of the system of legislation, in particular economic and tax, and the imperfection of the provisions of certain legislative acts regulating crime counteraction. In order to form an effective system for counteracting organized crime, scientific developments should be carried out, in particular, in order to systematize and to simplify the criminal-law basis of counteraction to organized

crime, to make it more precise, avoiding evaluative concepts and opportunities to further ambiguous interpretation in application.

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CRITICISM AS A CONCEPT OF CLASSICAL SCIENCE AND A SOCIAL PHENOMENON OF CIVIL SOCIETY: THE POTENTIAL OF CONSTITUTIONAL AND INTERNATIONAL LAW (AS EXEMPLIFIED BY THE UKRAINIAN SOCIETY)

Nediukha M. P.

INTRODUCTION

The topicality of scientific criticism is conditioned by a number of circumstances: a) by its status as a scientific and educational paradigm, an immanent means of developing scientific knowledge, a manifestation of academic freedom and creative activity as well as by everyday circumstances of society's life. Lack of freedom of criticism negatively affects, first of all, the theoretical and heuristic potential of science, leads to its stagnation, generates the threat of its degeneration into dogma, utopia. Public crises, social disasters have as one of their underlying causes, as is known, the neglect of the possibilities of scientific criticism as a means of ensuring a public dialogue between the authorities and the people, the rule of law and civil society; b) by the necessity of creating the space of public scientific and information communication, the transition from the paradigm of reproduction of knowledge to the paradigm of the formation of the capacity for independent creativity, creative, innovative activity; c) by its ability to integrate science, education and innovative activities / production as the dominant regularity of the development of a «knowledge society»; d) by ensuring the competitiveness of science and the profession of scientist; e) by being an effective means of limiting / eliminating the threats of subjectivism and voluntarism in the process of cognition, of avoiding dissent charges, of neutralizing the threats of the use of repression against scientists, etc. As an example of the latter, one may consider, in particular, the campaigns officially declared by the Soviet authorities to «combat bourgeois pseudoscientists» – sociology, political science, general theory of systems, genetics, cybernetics, mathematical logic, the theory of relativity, etc. – which was fairly qualified as manifestations of the scientific inquisition of the Middle Ages

and the New Time (processes against J. Bruno, N. Copernicus, G. Galilei, etc.); e) by the tasks of forming personal and professional competence.

A human being, being a personality, a biosocial being as the supreme creation of God, is gifted, as is known, with a special ability – critical thinking as a natural ability to respond to the world of ideas, value orientations and beliefs, circumstances of everyday life by expressing his attitude – rational or emotional, constructive or destructive, ironic or satirical, high or low, etc. The above is achieved, as it is generally known, by means of arguments and counter-arguments, objections and assertions and their organic combination in the process of deploying a discussion or polemics, as well as by formulating conclusions (inferences) as definitive, recognized by the scientific community for a certain period of time, results of research as true or vice versa – false, subjectivist, controversial, destructive. Accordingly, in the latter case, the attitude of a human being toward a human being as subjects of social interaction can acquire deformed features – both in the essential and functional, goal attainment characteristics – then scientific criticism turns into its opposite – faultfinding, thus replenishing not the research arsenal of science, but the methods of eclecticism, sophistry, manipulative influence on the consciousness of man, public opinion that distort the truth, generates states of information, psychological, or hybrid war, leads to hidden actions of real aggression, annexation of a part of the territory of a sovereign state, thereby imposing on the international community threatening scenarios of returning to the policy of conflict and force confrontation.

Unfortunately, the problematics of critical thinking can hardly be considered developed: the terms «scientific criticism», «critical thinking», «constructive criticism», «faultfinding», etc, are groundlessly absent in domestic encyclopedias and dictionaries, monographic studies. In the educational-methodical literature, the content of the aforementioned fundamental concepts of science is reduced mainly to the search, detection, and correction of logical errors of the process of proving or refuting one or another thesis, judgment, reasoning, etc, which is equivalent to substituting the meaning of the term «error» for the term «criticism». Accordingly, according to the latter methodological approach, criticism is often regarded as theoretical conceptualization and methodical / technological guidance

for finding an error and correcting it (a formal-logical operation), with which one can hardly agree.

1. The essence and purpose of scientific criticism / critical thinking

Critical thinking is, as we know, a multiple-meaning term used in various spheres of society's life, while being one of the defining attributive characteristics of man as a biosocial being, as the supreme creation of the Cosmos. Accordingly, scientific criticism is: 1) a notion of science; 2) individual or collective social action, an everyday attribute of human life; 3) the unity of word and action in the legitimate social space – legal, intellectual, economic, entrepreneurial one, etc. as an established, civilized way of responding to events, facts and processes, and various manifestations of the modern world. Scientific criticism implies unconditional recognition of the right of the other to exist as a self-sufficient subject (a person, a social or political organization, etc), an equal party in a dialogue or polemics, the presence of an interested partner or a known opponent, etc. In this sense, the essential content and functional purpose of scientific criticism is determined by the content of the principle «when you criticize, propose; when you propose, act.».

Criticism, being a notion of classical science, can be defined as an effective polemical means to overcome the limitedness of a publicly expressed point of view, published theoretical constructs, starting with a separate judgment (definition) and up to the clarification of the essence of concepts, doctrines, or theories by bringing forward and properly substantiating a constructive alternative as a kind of variant of finding the truth, or at least a satisfactory answer to the question of the opponent[1].

Criticism is also defined as «one of the important methods of scientific knowledge, aimed at testing any scientific judgments and knowledge systems and disposing of them in the event of their inconsistency with established cognitive criteria and standards. The latter include, in particular, the principles of objectivity, truth, provenness, universality, utility»[2]. Criticism as a scientific term is also used by

[1] Недюха М. П. Критика як теоретико-пізнавальний та діалогово-полемічний конструкт конституційно-правового мислення // ІІ Всеукраїнські правові наукові читання пам'яті доктора юридичних наук, професора, заслуженого юриста України, член-кореспондента Національної академії правових наук України Ніни Романівни Нижник: збірник матеріалів / за заг. ред. А. Є. Шевченка. Вінниця: ТОВ "ТВОРИ", 2018. 180 с.

[2] Лебедев С. А. Философия науки : краткая энциклопедия (основные направления, концепции, категории). М.: Академический проект, 2008. 692 с.

representatives of non-classical and post-nonclassical science, the main content, functional, and target-orienting features of which are seen in the positioning of the subject of action and the construction of the appropriate space – social, legal, political, civil one, etc.

Creators of criticism as a kind of paradigm of scientific research, its classics are philosophers of Ancient Greece and Ancient Rome, who in dialogue form developed ideas about the nature, essence, rootedness of law in the objective and subjective nature of things, in the eternal order of the structure of the universe with its subordination to the flow of time and the immutable human nature (Democritus, Anaxagoras, Socrates, Epicurus, Protagoras, Plato, Gorgias, Prodiquus, Antiphonus, Aristotle, etc.).

German philosopher A. Schopenhauer (1788-1860) first synthesized techniques of polemics, singled out the errors of thought, polemics as a public event[3].

The philosophy of I. Kant (1724-1804) is commonly categorized, as it is known, into two periods – the «pre-critical» (until 1770) and the «critical» ones. In his major works of the «critical» period – Critique of Pure Reason (1781), Critique of Practical Mind (1788) and Criticism of the Judgment Capacity (1790), the cognitive capabilities of man, the source and potential of scientific thought, knowledge, and faith, of «categorical imperative» as a moral obligation and a universal principle of social behavior are thoroughly investigated. The creative precept of I. Kant is that «philosophical research should be based... on a critical study of the cognitive capabilities of man, as well as of the boundaries to which knowledge is directed»[4].

Peter Struve (1870-1944) and E. Bernstein (1850-1932) are known, first of all, as consistent critics, systemic opponents of Marxism with its theory of revolutionary overcoming of the historical contradiction between the determinism of capitalism and the voluntarism of the proletariat.

Peter Struve noted, in particular, that Marxism combines both scientific realism and elements of utopia, fatalism, and radical pragmatism. Seeing P. Struve's views as the greatest threat to the spread of the doctrine of K. Marx in the Russian Empire, V. Lenin, as it is well known, devoted to the analysis of the theoretical positions of his opponent one of his first works «The Economic Content of Populism (Narodnik

[3] Шопенгауэр А. Эристика, или искусство побеждать в споре. СПб.: 1900.
[4] Асмус В. Ф. Иммануил Кант. М.: "Наука", 1973. 534 с.

Movement) and Its Criticism in Struve's Book (Reflection of Marxism in Bourgeois Literature)" in connection with the book by P. Struve «Critical Notes on the Question of Economic Development of Russia» (1984), which, however, only contributed to the popularization of P. Struve's views as a theorist of «legal Marxism», a systemic critic of Marxism.

Eduard Bernstein, being the author of the famous credo «The ultimate goal is nothing, but the movement (to it) is everything», called into question the fundamentals of Marxism with its communism, the dictatorship of the proletariat, and the leading role of the party vanguard of workers, refuted the theses of the drop in profit rate in connection with the process of capital accumulation, of the destruction of the middle class and the death of capitalism, of the expediency of total nationalization and central planning, substantiated the starting points of the theory of social state, etc[5]. It is noteworthy that the ideas expressed by E. Bernstein were further developed in scientific works of Peter Struve, Nikolai Berdyaev, Sergei Bulgakov, Bohdan Kystyakivskyi, Mykhaylo Tuhan-Baranovskyi, etc, as well as were confirmed by the practice of social changes of the twentieth century, by the facts of the everyday reality of the modern world.

Karl Popper saw in Marxism a form of manifestation of «methodological collectivism» – the all-encompassing influence of the state, class, ideas on the course of historical and social processes and the consideration of man as a means of achieving the goals set. Instead, the ideal of social reformation of society should be represented by a democratic, «open» society, which establishes human rights and freedoms through their institutionalization[6].

Systemic critics of Marxism also include T. Adorno, R. Aron, M. Weber, J. Habermas, R. Garaudy, M. Horkheimer, M. Dilas, S. Carillo, L. Kolakowski, G. Lukacs, H. Marcuse etc.). For example, J. Habermas quite rightly views democracy as a means and real practice of achieving rational and open consensus in the process of developing and adopting decisions.

[5] Бернштейн Э. Воспоминания: Социал-демократические годы учения. В годы моего изгнания. К.: Основні цінності, 2005. 328 с.

[6] Поппер Карл. Открытое общество и его враги. Т.1: Чары Платона. Пер. с англ. под ред. В. Н. Садовского. М.: Феникс, Международный фонд "Культурная инициатива", 1992. 448 с.; Т. 2: Время лжепророков: Гегель, Маркс и другие оракулы. М.: Феникс, Международный фонд "Культурная инициатива", 1992. 528 с.

Critical rationalism (K. Popper, Lakatos, Feyerabend) considers that the criterion of truth is not proving and confirming knowledge, but rather its refuting by means of turning to empirical situations, presupposes criticism of both one's own arguments and arguments of the opponent, analysis of counterarguments and also considers it fundamentally possible to change one's views in accordance with the arguments presented in the discussion process[7].

The highest form of criticism is self-criticism. It is no coincidence that French philosopher of the XX century Michel Foucault defined criticism as a means, a system for evaluating oneself, one's own actions, both mental (spiritual) and physical.

Characteristic features of constructive criticism include: a) meaningful certainty and functional purpose, according to which criticism is a way of cognizing reality in terms of approaching the truth, its formulation and further deepening, and also a means to overcome the limitedness of a scientific viewpoint (a point of view, a conception, a theory) for the sake of assertion of completeness / comprehensiveness of the truth, for the sake of understanding its inexhaustibility and of the possibility of its application in accordance with the specifics of knowledge – humanitarian, natural, or technical; b) procedural deployment (dialogue, polemics, polygon) with the prospect of achieving the result of scientific research (truth, compromise, balance of interests, harmony, mutual exclusion of points of view, etc); c) the unity of rational substantiation of a thesis and its emotional expression.

The above requirements are of particular importance for the legal science, which operates, as it is commonly known, the notion of «norm», proceeds from the importance of its meaningful definition as a means: a) of observance / achievement of the balance of interests of various social groups, individuals, private and legal entities, etc.; b) of finding a dynamic balance of interaction of the main spheres of legal reality (say, legal regulation of information security and ensuring freedom of speech); c) of the normalization of relations of interpersonal interaction (legal regulation of human and civil rights and freedoms); d) of legal reformation of the Center's and regions' relations, of the activities of united territorial communities, of decentralization of management (optimal filling the state

[7] Петренко Е. Л. Критический рационализм // Политическая энциклопедия. В 2-х т. Т.1 / Нац. обществ.-науч. фонд; Рук. проекта Г. Ю. Семигин; Науч.-ред. совет: пред. совета Г. Ю. Семигин. М.: Мысль, 2000. 750 с.

budget, the state target funds, and the budgets of united territorial communities, formation of an effective mechanism of tax assistance for the development of small and medium entrepreneurship, etc); e) of the establishment of international legal principles of positioning of Ukraine in the European and world space. The domestic system of constitutional law offers, as it is known, solid groundwork in terms of theoretical and methodological, legal and regulatory, and institutional search for satisfactory answers to the challenges of the sovereign development of Ukraine, including in terms of comprehension of the above problems[8].

The theoretical and methodological potential of critical thinking gives answers, based on the text of the Constitution of Ukraine, in terms of, in particular, the expediency of reaching compromises and agreements, for example, with opponents of Ukrainian statehood, opponents of the sovereign development of the Ukrainian state, proponents of its consideration as «an accidental formation», «a weak state,» «a semi-state,» etc. For example, when resolving the issues of territorial integrity and sovereign development of Ukraine, of its annexed and occupied territories, it is obvious that compromises are impossible on the following issues: a) granting a special status to the quasi-state formation of the Individual Regions of the Donetsk and Luhansk oblasts; b) conducting elections in the annexed and occupied territories; c) the formation of law enforcement agencies from among the local population; d) the inadmissibility of separating the occupied territories from the «body» of Ukraine. In this case, the theoretical and legal basis for the consideration and solution of the above-mentioned issues is, of course, international law, in particular, law of armed conflict[9].

Accordingly, the tasks of scientific criticism are seen in the establishment of the truth in science, of the truth in society («truth as the meaning of life», A. de Saint-Exupery), in the positioning and constructing by a subject of activity of social space, the formation of tolerant principles of life of society through the establishment of its openness, preventing / overcoming the language of confrontation and hatred, manipulating individual and collective consciousness, in particular, as leitmotivs of the recent presidential campaign in Ukraine, etc.

[8] Федоренко В. Л. Система конституційного права України: теоретико-методологічні аспекти : монографія. К.: Ліра-К, 2009. 580 с.

[9] Тимченко Л. Д., Кононенко В. П. Міжнародне право : підручник. К.: Знання, 2012. 631 с.

Critical thinking can be considered as a source of supplying scientific knowledge, empirical information for reflection and systematic actions, generalizing conclusions and also as an indicator of the social health of a nation. Accordingly, it can be argued that the ability to correctly use the potential of critical thinking is a sign of the developed intellectual capacity of a person for communication as a form of tolerant / non-violent interaction and creative collaboration. It seems that the aforementioned capability of critical thinking unfolds as a purposeful activity in such possible areas: a) academic criticism as a scientific inquiry, the process of searching for knowledge (truth, novelty, utility, efficiency). In this case, the main forms of deployment of criticism are polemics, discussion, dialogue, and polylogue, which are carried out in accordance with established paradigms of scientific knowledge with the use of appropriate methodological tools (immanent criticism, epistemological and factual criticism), etc; b) civil dialogue as a means of achieving social compromise, peace and accord, conclusion of possible agreements between the parties (preventing / avoiding the «language of confrontation and hostility» among different groups of the political class, «mediation» in corporate law), etc; c) public discussion (discussion of topical issues of the life of united territorial communities as a means of forming the principles of self-organization – civil, social, legal, territorial ones, definition of the strategy of local and regional development in accordance with the provisions of law of local self-government), etc; d) public political-legal dialogue (discussion of programs of presidential candidates, candidates for deputies of different levels as a means of establishing constructive interaction between citizens and their elected representatives, the rule of law and civil society on the basis of the definition / observance of the system of checks and balances, the prospects for social changes and for the achievement of common good).

Election campaigns in Ukraine, both presidential and parliamentary ones, indicate that criticism is a powerful social, political-legal, and propaganda tool for influencing large groups of people, their behavior, and electoral choices. At the same time, election campaigns are sometimes predominantly emotional, based on promises, scandals, sensations, and investigations, show events, where the flow of information rather than the spread of knowledge dominates. The dominant social background is the confrontation of discourse, meanings, content, the fight

of «all against all»: it is usually difficult or even impossible to understand the essence of the problem that is being discussed publicly. Accordingly, the purpose of such measures is to form a «confused person» as an opposition to a «competent person».

It is obvious that the latest election campaigns in Ukraine indulge interests of the mass society with its inertness, passivity, individualism, and do not unfold, say, in accordance with the comprehended national interests, the priorities of the process of social change, ensuring the unity of the state and society, the authorities and the people, the formation of a civil identity. Information flows supplant knowledge, truth to the periphery of the public space. Dialogue as a public form of constructive interaction between parties gives way to monologue with its language of confrontation, hostility, and hatred, suspicion and distrust, the spread of stereotypes and clichés, «labels,» the widespread use of the techniques of «deceit,» «misleading rhetoric,» unwarranted promises, bribery of voters, etc.

Hence, the credo of monologue can be reduced to the postulate «he who indulges sentiments of mass society wins!», which gives rise to permissiveness, irresponsibility, legal vacuum and impunity, and, as a consequence, the irresponsibility of the elected.

Instead, the signs of criticism as a phenomenon of science and an attribute of civil society are: openness, constructiveness, goodwill, poly-subjectivity, non-personality, procedurality, dynamism, goal orientation, efficiency, unity of the rational and the emotional, verity in science and truth in society.

Essential variants of criticism include: a) paradigmatic criticism; b) polyparadigmal one; c) systemic one; d) interdisciplinary (discursive) one; e) ironic one; f) satirical one; g) admiring-contemplative one; h) skeptical-negative one; i) nihilistic-destructive one.

Criteria for expediency of critical reaction as a public rational-emotional action are determined by: a) the status of a subject of criticism; b) the content of the expressed ideas, judgments, assessments and their social / practical significance / public response; c) possible results of public communication.

Criticism cannot be considered constructive in case of: a) the domination of the emotional component over the rational one; b) the absence of a scientific or socially significant subject of dialogue or polemics; c) the absence of the subject of communication.

A subject (bearer) of criticism is a person (scientist, citizen, politician, etc), a society (an open one, a closed one), a state (a democratic one, a totalitarian one), a political nation, ideologies (left, right, and center ones) and their authorized representatives, public organizations, private and legal entities, etc.

It is generally believed that the determining ethnic-national structure of the critically minded Ukrainian society and, accordingly, the main subject / carrier of criticism in its constructive sense – meaningful, functional, and purposeful – is the formed political nation whose institutionalization activity (as one of a subject of criticism) allows, on the one hand, to render impossible the need to turn to populism as well as to eliminate the current practice of forming «parties and blocs of the named after...», and, on the other hand, to guarantee the ideological certainty of political parties and blocs as a reflection of legitimate interests and expectations of citizens, of the people of Ukraine.

Accordingly, there are grounds to argue that civil reflexive and behavioral criticism is the determining basis for the formation of the value consent of different social classes and groups which is based on national interests as a reflection of the civil stance of the inhabitants of Ukraine.

The object of criticism is represented by publicly expressed ideas, judgments, views, assessments, theories, concepts, normative legal acts as well as socially high-profile actions, etc. Criticism under all circumstances should be meaningful, substantiated, effective in terms of proving or refuting the thesis as an object of criticism; it should never be «personal,» manipulative, emotional, built on substitution of the thesis or arguments, on subjective interpretation of the basic premise of polemics, etc.

Critical analysis of the results of several sociological studies of the Institute of Sociology of the National Academy of Sciences of Ukraine obtained during the presidential election campaign shows that the desired ideological foundation for constructive interaction of the participants in the election race is associated with three basic ideological platforms as an integrative model of Ukraine’s development:

a) parties of conservative orientation (national-democratic parties – based on the model of the People’s Movement of Ukraine of the 90-ies of the last century);

b) parties of left and centrist orientation (social democratic parties in the European sense);

c) parties, whose activities are associated with Christian-democratic ideas (the Autocephalous Local Orthodox Church of Ukraine as a reflection of the spiritual aspect of sovereign development).

It is significant that the representatives of the domestic political class did not use the opportunity to form a new ideological synthesis as a consolidated platform for determining the strategic prospect of Ukraine's development. This means that the competitiveness of the domestic electoral system does not ensure the systemic integrity of the political-legal space in terms of the interaction of its components, the integration of society: national interests, political ideologies are replaced by party or personal / clan interests. Political competition is all-triumphant, because it not only kills the ability to think critically, at least in terms of comprehension of national interests and understanding the prospect of social change, but also sacrifices the consolidation potential of the Ukrainian nation.

Similarly, critical thinking, based on the results of recent sociological research, allows us to state: liberal ideologies and respective parties are marginal in Ukraine, since they, lacking a constructive program of their own actions and electoral support, are oriented primarily to serve the interests of actors of political and legal action not characteristic for them, first of all, of representatives of oligarchic capital, financial and industrial groups, etc.

Established positions, outdated paradigms proceeding from the need to find out and solve contradictions by means of overcoming (eliminating) one or even both parties of the relationship between entities not only have lost their effectiveness, scientific expediency, but also become a direct path to possible social upheavals, including world cataclysms.

The modern method of solving the most important contradictions of the modern world is associated with attempts to find, even between opposite, mutually exclusive theoretical constructs, common points of contact, elements of their unconditional focus on social good, harmony, understanding, etc. This means that modern humanitarian science should master multidisciplinary approaches, non-traditional means, methods, ways, and techniques for analyzing social phenomena, weighed, tolerant attitudes toward different philosophical systems and their authors, developing a peculiar methodology of constructive critical thinking, conducting a civilized dialogue between representatives of the classical,

non-classical and post-classical science, supporters of different ideological and political orientations in terms of reaching a consensus, civil accord, of avoiding confrontation, and so on. After all, only joint actions can help choose a civilized option for clarifying the problems of dialogue and polemics, creating of modern global technologies built on universal human development priorities. On the other hand, these same forces (or even one of them, if it slips out of democratic social control) can disrupt the balance, turn from a constructive factor into a crisis or a destructive, destabilizing, conflict one.

2. Faultfinding as a Phenomenon Incompatible with Scientific Criticism: Essence and Signs

In scientific literature, faultfinding is defined as a general philosophical methodological approach, according to which: a) the search and refutation of scientific theories is carried out through formal-logical operations[10]; b) the technique of polemics, which, in its essence, functions, and purpose is the opposite of scientific criticism, mainly boils down to the exchange of «arguments» using offensive terms, phrases, etc. Often, it grows into a dispute, conflict, and even confrontation of the parties, which has nothing to do with purpose-oriented activity (verity), truth, social justice, legality, tolerance. Faultfinding cultivates language of hatred and confrontation that are fairly identified as a threat to the democratic process of social change.

The main features of faultfinding are: personality-subjectivist orientation; negativity and destructiveness, closeness to creative polemics and discussions; toxicity in relation to the perception of another point of view or constructive position of the opponent, any subject of social action, which gives rise to a «deadlock» situation with an indefinite prospect of interaction between the parties as participants in polemics. It is known that A. Schopenhauer substantiated a number of sophistry techniques that have nothing to do with creative competitiveness of parties as participants in a discussion or polemic, with seeking truth, or trying to establish good, truth, and justice in society[11].

Tools of faultfinding, its methodical basis and technological and informational means of influencing human consciousness include, in

[10] Савельева И. М. Критицизм // Политическая энциклопедия. В 2-х т. Т.1 / Нац. обществ.-науч. фонд; Рук. проекта Г. Ю. Семигин; Науч.-ред. совет: пред. совета Г. Ю. Семигин. М.: Мысль, 2000. 750 с.

[11] Шопенгауэр А. Эристика, или искусство побеждать в споре. СПб.: 1900.

particular, methods of latent violation of the laws of thought – the laws of identity, consistency, substitution of subtle rhetoric and phrase-mongering in the process of proofing for the thesis, justification of the thesis with false arguments or arguments that themselves need proof, erroneous generalization, the use of «figures of suppression», etc. Another component of the aforementioned toolkit is represented by methods of suggestion (addressing human feelings) – «labeling», «brilliant uncertainty», «vulgarity», «unfair shuffling», «double standards», eclecticism and sophistry[12].

Faultfinding forms language of hatred, the atmosphere of confrontation, lines of division – imaginary or real – of a single social and legal space in separate territories that make it impossible to form a country as a holistic phenomenon, as a sovereign constitutional and legal formation.

Propaganda is a kind of faultfinding, too; its distinctive features are: a) directness; b) lack of sources of reference; c) emotionality; d) radicalization of rhetoric.

The priority areas of the deployment of critical thinking in the domestic political and legal space include: a) clarification of the essence and potential of public interest as a means of normalizing social relations; b) substantiation of the content of the interests of Ukrainian society, of its possibilities of influencing the activity of state authorities and united territorial communities; c) definition of the essence and appointment of national interests as the theoretical and methodological basis of legal science and a means of legal and regulatory framework of social relations.

3. Evolutionary Metamorphoses of Critical Thinking as a Kind of Indicator of the Process of the Formation of a Political Nation and the Formation of a Civil Society in Ukraine

Critical thinking, being an attributive feature of the life of Ukrainian society, of the process of its changes, implements its content and functional potential in its following main varieties:

1. Criticism as an event: the reflection of the current state of episodic, though sometimes rather effective, use of criticism as a constructive

[12] Недюха М.П. Системний аналіз історичних типів європейської ідеології. Ірпінь: Академія державної податкової служби України, 2001.195 с.

means of public polemics (journalistic investigations, separate theses of public debates of presidential candidates), etc;

2. Criticism as an attribute of the educational and academic environment, of the daily life of civil society: a) the use of polemical techniques as a constructive means of developing a dialogue, a discussion – mainly in the scientific and political spheres of activity; b) the introduction of critical thinking as a constructive tool for conducting dialogue, polemics, and discussion, as well as for the definition of initial theoretical and methodological positions in terms of providing methodology, methods, and technology for the exchange of ideas (paradigms of scientific knowledge, system analysis, legal / constitutional ideology, etc.); c) a component of reforming the Ukrainian society, of the goal-oriented process of deploying social change; d) an indicator of the effectiveness of the process of the formation of a political nation and civil society in Ukraine.

3. Criticism as a social phenomenon is considered as a means, resource, and potential of changes in the everyday life of a political nation, of the formation of a civil society as well as of the formation of a separate person as an active representative of civil society.

For deployment of criticism, for its use as a tool for dialogue and polemics in public space (including virtual one), its social context is important, in particular, preserving in the Ukrainian society the social tendency of recent years – reducing the index of social cynicism, which finds its embodiment in establishing a dialogue between the authorities and the people on the issues, in particular, of «weaknesses» of social reformation.

It is significant that the effect of this tendency is accompanied by the formation of the desirable state of a «generation leap»: older generations should not impose their values on young people, since the latter are characterized by pro-market value orientation and purpose-oriented action, built on personal interest. With the aforementioned tendency, in particular, the hopes of the formation of the desired image of the future Ukraine as a European state are associated.

4. Threats to the Spread of Critical Thinking in Ukrainian Society

As analysis shows, the main challenges and dangers of the establishment of critical thinking in Ukrainian society include the following ones:

a) the spread of post-truth, falsehood, and imitation as the basis for the formation of a society of mistrust, an environment of violence, «a war of all against all,» language of hatred, which creates threats to sovereign development of the Ukrainian state;

b) the formation of a «confused person» as a person-mass, who has lost himself, his ability to think critically, to adequately assess socio-political situation, since he is not up to speed on information flows nor does he trust sources of information and the authorities;

c) conscious focus on a «confused person», a «man of the masses» as a means of achieving a guaranteed victory;

d) populist statements (promises, slogans, declarations, emotionally oriented appeals, etc) as a threat of the revanche of anti-Ukrainian forces.

Constructive criticism is able to help overcome the wall of alienation between the authorities and the people by establishing a dialogue between the authorities, the public, and the entrepreneurs, the establishment of the Ukrainian language as a means of forming a single social space, a mandatory attribute of state building, of the educational process, of the self-actualization of a person. That is, a united and indivisible country should be built, the foundation of which should be represented by legal (constitutional) ideology[13].

Scientific criticism as the ideological and theoretical (worldview, value) basis of sovereign development, of ensuring the integrity of the country as well as a theoretical and legal means of responding to the ideology of the «Russian world» involves the presence of: a) a political ideology of national-democratic orientation; b) a legal (constitutional) ideology; c) a variant, adapted to the domestic realities, of one of the globalist ideologies – liberalism, conservatism, or social democracy; d) the political ideology of a «new synthesis» – in accordance with the national interests comprehended and standardized by law.

Identification signs of constructive criticism are represented by the degree of the establishment of verity in science and truth in society. Accordingly, scientific criticism by its nature, status, and purpose should

[13] Недюха М.П. Правова ідеологія українського суспільства : монографія. К.: "МП "Леся", 2012. 400 с.

be considered as an effective means of establishing a dialogue between the authorities and the people, ensuring transparency of the authorities, countering the formation of the atmosphere of hatred and confrontation in society, avoiding stereotyping of public opinion, preventing manipulation of human consciousness as well as promoting the orientation of media to unbiased, objective coverage of events and facts.

The means of achieving truth include, above all, the established paradigms of scientific knowledge (Marxism, structural functionalism, conflictology, the theory of social action, ethno-methodology, etc.), non-classical and post-classical theoretical and methodological approaches, which are also associated with the positioning and construction of the social / legal space of a subject of social action.

The real threats to verity in science – as a constructive means of polemics – include: a) discourse; b) an uncritical combination of theoretical and methodological propositions of various intellectual traditions, say, of structural functionalism and synergetics, of Marxism and the structural-functional approach, of Marxism and conflictology, etc, which leads to an eclectic combination of mutually exclusive propositions, conclusions, and recommendations; c) attempts to artificially indoctrinate into public opinion through media an atmosphere of contempt, intolerance, anger, hatred[14], artificial lines of confrontation[15], and so on.

The recent presidential election campaign in Ukraine has confirmed the rightness and scientific correctness, albeit with a delay of almost three years, of the proposal of the Oxford Dictionary of the English Language to consider the word of 2016 to be «post-truth» as a generalized description of the circumstances, the socio-political situation that has developed in a country, where objective facts influence the formation of public opinion less than emotions or personal beliefs, usually subjective, as well as mass propaganda shows.

Ignoring the identification potential of truth in Ukrainian society on the part of media does not allow to initiate a dialogue between the authorities and the people, the country of laws and civil society, much less to transform it into a nation-wide polylogue (as variants: a citizen – the

[14] Опубліковано на веб-сайті https://zik.ua/news/2019/02/01/stavniychuk_rozkrytykuvala_predstavnykiv_vlady_yaki_vyyshly_z_studii_narod_1501273

[15] Громадянська активність в Україні: чи приречені ми мати те, що маємо // URL: https://dt.ua/POLITICS/gromadyanska_aktivnist_v _ukrayini_ chi_ prirecheni_mi_mati_te,_scho_maemo.html

authorities – the people, the state – the public – the small and medium entrepreneurs) on the basis of consensus principles of cooperation, tolerance, social compromise, and civil peace.

Accordingly, the main threats to the truth as an identifying feature of an open society include: a) manipulation of public opinion, its stereotyping; b) the establishment in society of an atmosphere of confrontation, intolerance and cruelty, incitement to hatred and violence; c) the absence of legally regulated practice of responding to foreign-policy and ideological massive aggression by individual neighboring countries. Tellingly, the results of sociological research that are manipulatively obtained and subjectively interpreted «for a candidate» often turn into agitation, a tactical means of conducting an election campaign[16].

On the basis of active participation in the electoral process, of the attitude toward the presidential programs of the candidates for presidency in Ukraine, the adult population can be divided into two large groups of approximately equal numbers of voters – critical thinking supporters and «criticism» fans. This conclusion is encouraged by several circumstances: a) the election campaign did not answer the question of the desirable image of Ukraine in the consciousness of its citizens, which suggests that none of the candidates has offered any holistic vision of the process of social change, according, say, to the provisions of Art. 1 of the Constitution of Ukraine; b) the public nation-wide pre-election discussion did not allow to make it to a systematic vision of the prospect of Ukraine becoming a legal, democratic, social state; c) the public discourse of the discussion of the programs showed the dominance of technological aspects of the participation of a particular candidate in the election process, rather than discussing the content components of the program in their compliance with the challenges of Ukraine's sovereign development, etc.

CONCLUSIONS

1. Critical thinking can be considered one of the key competencies of man, taking into account, in particular, a number of features inherent in it: a) constructiveness; b) dialogicity; c) the ability to distinguish truth from error, truth from post-truth; d) providing legitimate protection against deception and manipulations that are disseminated by mass media;

[16] Опубліковано на веб-сайті https://zik.ua/news/2019/02/01/stavniychuk_rozkrytykuvala_predstavnykiv_vlady_yaki_vyyshly_z_studii_narod_1501273

e) establishing the truth about Ukraine and its people, its past, present, and future.

2. The potential of critical thinking, its social and political-legal effectiveness is determined by the degree of maturity of a political nation / civil society as the subject of criticism. According to recent sociological surveys, only 7% of Ukraine's population holds an active civic position; 80% of Ukrainian citizens do not engage in social activities at all; 53% do not have a developed sense of responsibility, in particular, for the state of the situation in the country: a culture characteristic of subjects forms, as it is known, paternalistic mass consciousness and social reconciliation.

3. Priority areas for the deployment of critical thinking are: a) clarification of the essence and potential of public interest as a means of normalizing social relations; b) substantiation of the essence of the interests of various social groups of Ukrainian society, their possibilities of influence on the activities of state authorities and local self-government bodies; c) definition of the essence and purpose of national interests as a theoretical and methodological basis of legal science and a means of legal regulation of social relations, etc.

4. Constructive criticism should be considered as an effective means of counteracting the formation of an atmosphere of hatred and confrontation in society, of avoiding stereotyping of public opinion, manipulation of human consciousness as well as promoting the orientation of mass media to objective coverage of events and facts, of ensuring human and civil rights and freedoms, transparency of power, and of establishing a dialogue between the authorities and the people.

5. Constructive criticism as an ideological and theoretical (ideological, value) component of sovereign development as well as the theoretical and legal basis for responding to the ideology of the «Russian world» implies the presence of: a) a political ideology of the national-democratic orientation; b) a legal (constitutional) ideology; c) an variant of one of the globalist ideologies – liberalism, conservatism, or social democracy – adapted to domestic realities; d) the political ideology of a «new synthesis» – in accordance with the national interests comprehended and standardized by law.

6. It is unacceptable to identify critical thinking with formal-logical thinking, much less to reduce criticism to correcting mistakes made, for example, in a scientific text. Critical thinking has nothing to do with faultfinding as a biased subjectivist position, the mental set of rejecting a

stand taken, an author's view declared, a particular judgment or argument as allegedly a priori ineffective.

7. Critical thinking takes on characteristics of professional competence and professional formation of graduates with bachelor's and master's degrees. Accordingly, there are grounds to state that it is advisable to introduce a student course with the tentative working name «Critical Thinking as a Paradigm of Scientific Research.»

An urgent task is, in our view, to substantiate the theoretical and constitutional and legal principles of scientific criticism as a constructive means of ensuring the unity of science and education in the educational process, to form critical thinking as a professional competence, substantially limiting / overcoming the practice of political and legal manipulation of individual and mass consciousness, which implies unconditional reneging on the previous tradition of all-consuming influence of the state on a individual, society as a whole and establishing the priority of human and citizen rights, considering man as the highest social value.

Important tasks are also connected with the possibilities of introducing critical thinking into the educational process in terms of forming in students skills and abilities to tolerantly conduct dialogue, public polemics, correctly pose questions and give satisfactory answers to them, etc, which will facilitate the humanization of the domestic social space, the establishment of a consensus basis of society's life. Critical thinking should acquire the signs of professional competence and professional development of undergraduates and graduate students. Accordingly, there are grounds to state that it is advisable to introduce a student course with the tentative working name «Critical Thinking as a Paradigm of Scientific Research.»

In the educational process, it is important to emphasize that, for example, domestic mass media often resort to a manipulative technique, the name of which is «primitive reductionism»: they identify petty, administrative, and political corruption, reducing them to petty one. In this case, the helplessness of the authorities in confronting corruption often goes down to the generalizing constant: «Corruption is invincible, because the people are so!», that is, as it happens, the Ukrainian people engender corruption by definition. Corruption is presented as a sort of a birthmark of a Ukrainian citizen, allegedly a daily and long-time attribute of his life.

At the same time, the results of applying the methodology of critical thinking show: a) the greatest threat among the above-mentioned types of

corruption is, of course, political corruption, which, becoming a threat of a nation-wide nature, is quite rightly connected mainly with the activity of the bureaucratic apparatus of central executive and local government bodies; b) the people cannot be a bearer of corruption because of a number of circumstances: they de facto are some of the poorest in Europe and de jure a source, a bearer of power, of the sovereignty and independence of the country. Accordingly, a simplified, primitive, pre-Weberian (XIX century) understanding of corruption is imposed upon society.

8. The uniqueness of critical thinking lies in the fact that unfolding as a monologue, dialogue, or a polylogue, the specified social phenomenon always involves an interlocutor, imaginary or real. It is also unique in its results: verity, truth, responsibility, rights and freedoms, honor and conscience. Criticism and plagiarism are incompatible in nature. There are no doubts concerning public achievements of critical thinking, either: a self-sufficient personality, a formed political nation, a humanized social space, civic consensus as a counterweight to cynicism and disappointment, post-truth, bureaucracy, and corruption, the omnipotence of the Golden Calf. Legal critical thinking, in accordance with the realized national interests, forms the modern Ukrainian political nation as a unique natural creature and an irresistible social phenomenon of the world history.

9. Critical thinking, in its essence and functionality responding to the European tradition of the rule of law, contributes to the strengthening of domestic constitutionalism, inter alia, concerning the ensuring of rights and freedoms of man and citizen (forms and methods, guarantees, implementation mechanism), and creates conditions for civil society to control actions of the state and its authorized persons.

SUMMARY

The essence and purpose of scientific criticism / critical thinking as an effective toolkit of science and a social phenomenon of civil society are substantiated. Its subjective and objective components, sources, characteristic features and tasks as well as priority areas of deployment of scientific criticism and variants of the latter are described. Identification signs of scientific criticism in science and society are identified, being, respectively, verity and truth. The evolutionary dependence of the content and functional characteristics of critical thinking on the dynamics of the process of social change, the formation of civil society in Ukraine is

analyzed. Faultfinding as a phenomenon incompatible with scientific criticism is considered. Emphasis is laid on challenges and threats, objective and subjective obstacles to the spread of critical thinking in the Ukrainian society.

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ADMINISTRATIVE LAW REFORM IN THE CONTEXT OF HUMAN RIGHTS

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INTRODUCTION

Forming a democratic, social and law-governed state in Ukraine requires bringing a system of Ukrainian law in compliance with such principles on which the respective systems of developed countries around the world are based, in particular ,in European countries. Considering the issue of adjusting of Ukrainian law to European standards, one should say about the dualism of law, that is, its division into private and public, which, although not officially consolidated, in fact, exists in Ukrainian law.

The dichotomy of law, with its division into public and private law, was substantiated theoretically in ancient Rome. It was Roman lawyers who believed that this division was natural because it reflected the comprehensible features and differences of relation between the state and a private individual. The essence of such division is an interest which is protected a legal order.

Public and private law as two parts of one whole are interconnected and at the same time we can clearly distinguish them. The functions they perform are ultimately in the interests of everyone. Public law is intended to defend and protect private relations. Private law creates the material basis for the existence of the state that protects public institutions, families, property, inheritance, etc. Today, both public and private law remain the fundamental source of a truly democratic legal system.

When leading lawyers from foreign countries traditionally developed the democratic foundations of legal systems in their countries for a long time, at the territory of Eastern Europe revolutionary events took place that interrupted the gradual development of legal thought and led to the legal justification of totalitarian regimes.

Wrong understanding of terms and relations regulated by two components of civil law, namely public and private law, created the conditions for the transformation of administrative law into punitive law. As a result, and due to the internal unity of administrative law, it turned,

in accordance with the Soviet model of public relations, into law that regulates all domains of public life, including the private law relations in the domain of economic activity. In the Soviet period of development of law there was neither possibility nor sense in any research on this issue, because the dualism of law was not recognized officially. The norms on administrative responsibility of officials – managers of factories, plants, etc., could only arise in the legal system serving a militarized society, where heads of institutions and departments had military ranks and executed secret, military tasks, where enterprises and even entire cities were classified, etc. Only after reformation and choosing a course on the construction of a law-governed democratic state by post-totalitarian countries the works dedicated to this issue appeared[1].

As A. Kolodiy rightly notes, the field of public law should be regarded as vertical relations (administrative), relations of subordination, power – subordination. Their regulation should be carried out on the principle of imperative nature, and the rights and obligations of the subjects should be formulated explicitly and comprehensively in law. A scholar defines the field of private law as a set of horizontal relations that provide for an equal position with respect to independent subjects. They are governed by the principle of discretion nature, and the subject themselves, within the framework of law, establish their rights and obligations[2].

1. The Reformation of Public and Private Legal Relations

Performing the role of public relations regulator, the state always tends to reach their maximum number, even where mere private interests are realized. However, compliance with the balance of "regulation" and "non-interference" on the part of the state is an indicator of a democratic law-governed state with market economy. Therefore, any relations in the field of economic activity are regulated. And their public activity in the field of economic activity, in the field of profit etc. was under the state monopoly – there were no private companies, institutions, organizations as a class.

Nowadays, we still experience the echo of the Soviet approach to regulating public relations. The Code on Administrative Offenses of

[1] Адміністративне право України. Академічний курс : підручник : у 2 т. / ред. колегія: В.Б. Авер'янов (голова). – К. : Юридична думка, 2004. – Т. 1. Загальна частина. – С. 132–133.

[2] Колодій А.М. Принципи права України / А.М. Колодій. – К., 1998. – С. 66.

Ukraine contains a large number of norms that provide for the responsibility of private law subjects for violating rules, legal norms, standards that have no relation to the state administration.

The distinguishing of an individual branch of law, namely, economic law was a great step towards the denationalization of the part of legal relations and their adjustment in accordance with the world standards. However, there are still discussions about its nature and place in the system of law, considering that it is the administrative and legal field of public relations where the economic law has taken its origin. Thus, some scholars strongly affirm that the existence of economic law as an independent branch of law is justified (V. K. Mamutov, V. V. Laptev, I. G. Pobirchenko, at al.). Other scholars (S. Bratus', R. Khalfina, G. Matveev, Y. Shevchenko, A. Dovgert, at al.) consider that the economic law is not an independent branch of law, but rather a combination of civil and legal, administrative and legal norms in the field of economic activity.

There are some views that economic relations can not be divided into civil-legal and administrative-legal, although the historical roots of economic law is in the field of both public and private law. Moreover, economic law has a significant share of its own regulatory material, which does not belong to either civil or administrative law. The institution of bankruptcy is one of such institutions led to the separation of economic (trade, commercial) law in a separate branch of law[3].

Moreover, there is a scientific position, according to which, within the branch of administrative law should be distinguished sub-branch, namely, administrative-economic law. "The need for the emergence and development of administrative-economic law is explained by the need to put in order public relations that arise between economic entities. Both the said entities and the state are interested in regulation of such relations, since today the economy is fundamental to provide the existence of the country population and a constant increase in its standard of living. Therefore, legal norms are being developed and adopted at the state level

3 Мандриковський М.М. Господарське законодавство: Навч. посібник. – Львів: Вид-во Нац. ун-ту "Львівська політехніка", 2004. – 172 с.; Пігач Я.М., Труфанова Л.М.: Господарське законодавство: Навчальний посібник. – К.: Центр навчальної літератури, 2005. – 624 с.; Беляневич В.Е. Науково-практичний коментар до Господарського процесуального кодексу України / В.Е. Беляневич. − К. : Видавництво «Юстініан», 2008. − 872 с.; Притик Ю.Д. Науково-практичний коментар до Господарського-процесуального кодексу України / Ю.Д. Притик. − К. : Центр учбової літератури, 2011. − 719 с.

that should contribute to the development of the national economy. In fact, these norms form administrative-economic law"[4].

It is not possible to ignore the trend to crystallization of a new approach to understanding the system of law based on the legislation system. The division of the law in branches and sub-branches introduced in the Soviet legal doctrine is not always consistent with the requirements of time. At that time, in many European states, the law was developing on the foundations of Roman law. In French legal science, it is divided into two specialties: public and private[5]. This way, new branches of law have appeared: information law, banking law, financial law, tax law and others. In fact, they are more close to the notion of "a branch of legislation" than "a branch of law". After all, public law and private law relations, methods, as well as regimes are "mixed" in them. Scientific developments from other sciences and applied disciplines such as economics, mathematics, statistics, and others have gained a great significance in them.

Dozens of thesis studies, the subject of which are economic-legal relations, regulation of social processes in the state, show, on the one hand, that today administrative law has become a kind of catalyst for the transformation of both public relations and the scientific and legislative components of law as a phenomenon. This process is already taking place. And scholars should not be aside, but rather explore and develop the latest approaches. We already have a positive experience in the emergence of such scientific schools: "tax law" – M. P. Kucheryavenko, "medical law" – S. G. Stetsenko, V. Y. Stetsenko, "information law" K. I. Belyakov, R. A. Kalyuzhny, I. V. Aristova, "customs law" – D. V. Priimachenko, Y. D. Kunev, B. A. Kormych and others.

Now it is clear that the economic activity of an economic entity, regardless of ownership, whether it is a private firm, or a public institution, should be governed by legal norms of private law. Payment of utility bills as well as payment of wages, etc. is manifestation of economic activity. Therefore, economic law is a part of private law[6]. This way, the

4 Мельник Р.С. Адміністративно-господарське право як структурний елемент системи адміністративного права: зарубіжний досвід та національні особливості / Р.С. Мельник // Право і Безпека : науковий журнал. – 2010. – № 2 (34). – С. 34–37.

5 Головко Л.В. Вступительная статья / Кабрияк Р. Кодификации / Пер. с фр. Л.В. Головко. – М. : Статут, 2007. – С. 12.

6 Хозяйственное право Украины: Учебник / Под ред. А.С. Васильева, О.П. Подцерковного. – Харьков: ООО "Одиссей", 2005. – 464 с.; Хозяйственное право: Учебник / В.К. Мамутов, Г.Л. Знаменский, К.С. Хахулин и др.; Под ред. Мамутова В.К. – К.: Юринком Интер, 2002. – 912 с.; Щербина В.С. Господарське право: Навчальний посібник. – К.: Вентурі, 2004. – 288 с.

legal relationships and responsibility for their violation can not be regulated by administrative legislation. The norms governing responsibility for the misconduct in the field of economic activity must now be classified as “Economic misconduct” in economic law, as it was with customs misconduct.

The activity of legal entities not related to the exercise of powers in the public law field is not state management, and therefore can not be an administrative activity. Mostly, it is an economic activity, which is regulated by economic law norms. It is mostly economic activity regulated by economic and legal norms. The responsibility of economic legal relation entities, which is currently established by the Code on Administrative Offenses of Ukraine, should be stipulated by the Civil, Commercial, and Commercial Procedural Codes[7]. And thus, the legal norms should be transferred from the Code on Administrative Offenses of Ukraine to codification acts of the relevant branch. E. V. Pogorelov emphasizes that “the formation of civil society requires the extension of the field of private law and reduction of public law”[8].

2. Systematization as the Basis for Improvement of Applicable Codes

Administrative law is the classical branch of public law. However, the legal norms of this branch are closely related to other branches of both public and private law. French professor Guy Braibant noted that administrative law regulates the organization and functioning of the state management apparatus, its relations with individual citizens, but does not regulate the following: a part of work of administrative structures provided by norms of civil law; formation of a policy – it is considered the prerogative of the parliament, the government or the head of state and falls under the scope of constitutional law; judicial activity in resolving disputes between citizens (civil-procedural) and bringing to justice those who committed crimes (criminal procedural law)[9].

The pyramid structure, in which the constitutional law is at the top, the administrative and criminal law is at lower level, then the labor, land, customs, economic law, etc., is stable and unshaken. In such system it is difficult to find a place for an average citizen who is constantly under

[7] Господарський кодекс України. Господарський процесуальний кодекс України: Офіційні тексти / Міністерство юстиції України. – К.: Юрінком Інтер, 2003. – 304 с.

[8] Погорєлов Є.В. Кодифікаційна діяльність в правовій системі України (загальнотеоретичний аспект). – дисертація на здобуття наукового ступеня кандидата юридичних наук. – Харків – 2000. – С. 68.

[9] Школик А.М. Порівняльне адміністративне право : навч. посіб. − Львів: ЗУКЦ, 2007. − С. 25-26.

pressure from the authorities and laws. However, the authoritative, hierarchical and pyramidal structure is gradually deepening into problems and unresolved conflicts.

We are not going to stop and criticize a range of modern concepts born on the basis of scientific searches in detail, as they are not based on the achievements of legal science. Obviously, patriarchal approaches to the formation of scientific schools, the destruction of opponents with the help of status and ties can not be considered normal. In addition, attention has been consistently paid to a low level of thesis research, plagiarism and compilation in a number of scientific works, which is in fact unacceptable, in the publications on pages of scientific reviews as well as in the orders of the Ministry of Education and Science.

By such actions and counteractions two things take place that negatively influence the development of science. Firstly, a number of pseudo-humanistic approaches to administrative law are being developed, discussions on the administrative responsibility of legal entities are continuing, the whole branches of law are being created with their sub-branches, but without their own methodological approaches, mechanisms, etc. Secondly, there is a "pressure" on all the latest scientific ideas and stories in the legislation of the authors who do not have the proper "weight" in the "scientific world".

At this certain time in administrative legislation there is a complete disharmony, a number of legal norms simply contradict the elementary logic. In fact, such norms "do not work" at all. They are called useless. However, they still remain in force. Even their presence prevents the state from developing but without understanding the reasons for their appearance in legislation it is dangerous to cancel them. In this context, the purification of legislation from alien layers and outdated approaches should be based on conceptual doctrinal approaches to law. A measure and a standard of legislative activity should be the Constitution, as the Basic law of the country.

Analyzing legislation, the important stage is incorporation (lat. Incorporatio – accession) – a kind of normative act systematization, which consists in bringing them into collections in a certain order without changing the content of normative acts. One should define the field of public relations as the criterion for systematization in the form of incorporation.

At present, it is necessary to speak about the branches of legislation located in one horizontal plane. We would like to emphasize that the branches of legislation is a conditional denotation of certain parts of the country's legal system. Laws should regulate certain areas of public life; therefore, the question of merging branches of law and branches of legislation, areas of public life, which are now in constant transformation should be raised.

These branches are large groups and have their own codes. Institutions, sub-institutions are connections between branches, enshrined in laws. In the same way, the issues of activities of certain state institutions, ministries and agencies should be consolidated by the laws but in no case by orders and decrees. The legal norms (as a cementing substance) run through all the components of this construction. It is only possible to build the law-governed state on such solid monolithic foundation.

At present, in Ukraine there are some legal acts that were adopted during the Soviet period of the state existence and are still in force. In many cases, they do not correspond to the realities of the present. Standards, GOSTs (state standards), operating manuals have sometimes remained behind scientific and technological progress for decades. By their number and inconsistency, they distract the attention of both controlling bodies and society from the level of observance and protection of human rights and freedoms in relations with the subjects of powers. In such a situation, a detailed revision of the existing legal and regulatory framework in all domains of socio-economic life is required.

Systematization of legislation is an activity aimed at sorting out the current normative legal acts in a single agreed system, in order to ensure effective legal regulation. There are the following types of systematization: accounting, codification, incorporation and consolidation.

Systematization is aimed at achieving the internal unity of legal norms, that is, to eliminate conflicts and gaps, which increases the effectiveness of legislation and putting in order the legal material, placing it in certain sections and headings, that is, a classification providing the convenience of using the legislative data sets. Systematization can be internal and external. The purpose of internal systematization is the internal processing of normative acts, contributing to the achievement of

the internal unity of legal norms. The purpose of external systematization is the external processing of normative acts, their classification.

The systematization is made in four ways:

- Accounting (magazine, card, electronic) – collection, settlement in logical sequence and storage of normative legal acts, keeping them in the appropriate control (current) state, taking into account all changes and amendments, as well as creation of special systems for their accumulation and search;
- Incorporation – uniting a group of valid legal acts in one collection according to a certain criterion (chronological, thematic, etc.) without changing their content;
- Consolidation – a kind of systematization in the process of which several acts are combined in a new document. In the process of consolidation, the law-making body creates a new legal document, which completely replaces the previous one; all normative provisions of previously adopted acts are united in it without changes, although, as a rule, their editorial correction is made: contradictions are eliminated, as well as repetition, etc. In countries of the Romano-Germanic legal system, consolidation performs only an auxiliary role (eliminates the plurality of new legal acts, their extreme fragmentation, and duplication). However, it is actively used in countries of common law;
- Codification is a meaningful processing, coordination and consolidation of a certain group of legal norms related to the common subject of legal regulation, in a single normative act.

The purpose of incorporation is to prepare the current legislation to codification and construction of a logically structured system of legislation. This is also improvement of communicative codes, incorporation of the adopted laws into already existing codified acts, codification of laws regulating one socio-economic domain, changes, amendments and additions to codes.

There are some types of incorporation:

- In accordance with legal significance: official incorporation, that is, putting in order regulatory acts by publishing the collections of applicable legal acts (for example, the publication of laws in the Bulletin of the Verkhovna Rada of Ukraine, amendments and additions) by law-making competent authorities or authorized competent authorities by them; unofficial incorporation is the preparation and publication of collections

of current normative legal acts by non-law-making state bodies or other organizations or individuals.

- In accordance with a scope: common (general); branch; inter-branch; special (by specific institutions of one law branch).
- In accordance with the criterion of unification of normative and legal acts: objective, that is, by object of regulation; chronological (by the time of normative legal acts publication); subjective (depending on the body issued the acts).

Incorporation (lat. Incorporatio – joining) is a kind of normative acts systematization, which consists in consolidating them in collections, in a certain order without changing the content. The field of public relations should be the criterion for systematization in the form of incorporation.

At present, it is necessary to speak about the branches of legislation, located in one horizontal plane. We would like to emphasize that the field of legislation is a conditional definition of certain parts of the country legal system. Laws should regulate well-defined areas of social life; therefore, the issue of merging the branches of law and the branches of legislation, the areas of public life, being now in a constant transformation, should be raised. These branches are large groups and have their own codes. Institutions, sub-institutions are connections between branches, enshrined in laws. In the same way, the issues of activities of certain state institutions, ministries and agencies should be consolidated by the laws but in no case by orders and decrees. The legal norms (as a cementing substance) run through all the components of this construction. It is only possible to build a legal state on such solid monolithic foundation.

The whole range of legal acts that was adopted during the period of state existence and is still in force and scatters the attention of both controlling bodies and society from the level of observance and protection of human rights and freedoms in relations with the subjects of powers.

The most demonstrative example of incorporation can be collections of normative and legal acts governing labor relations[10]. Especially since labor law is closely associated with administrative law in relation to general issues in the work relation regulation. Those who are not subject

[10] Кодекс законів про працю України. – К., 2008. – 124 с.; Про порядок вирішення колективних трудових спорів (конфліктів) : Закон України від 03 березня 1998 року № 137/98-ВР // Відомості Верховної Ради України. − 1998. − № 34. − Ст. 227; Про відповідальність суб'єктів підприємницької діяльності за несвоєчасне внесення плати за спожиті комунальні послуги та утримання прибудинкових територій від 20 травня 1999 року № 686-XIV // Відомості Верховної Ради України. − 1999. − № 29. − Ст. 240.

to the Labor Code and collective agreements are regulated by the norms of administrative law (conditions of entry into service, the record of service, the rules of keeping official documents, the assignment of special personal titles, ranks and grades, and other issues that constitute organizational activity state in the field of work relations)[11]. The connection of labor law with administrative law is also manifested in the training of personnel. The whole system of training of blue collar workers and specialists, excluding the training of workers and the retraining of specialists at the production directly, when the student agreement can be concluded as a kind of labor contract, is the subject of administrative law regulation.

We should emphasize that law in the field of civil servant labor, officials, state power bodies, law enforcement bodies etc. requires improvement. The main thing is to determine the status of employees and officials exactly as the participants of a particular type of labor process (for example, the regulation of the right to remuneration for work, for vacation, for social insurance). At the same time, a certain interweaving of norms of labor and administrative law can be observed. For example, labor law governs everything directly related to the work of a citizen. However, registration to work, powers of the administration in the field of service by employees of state bodies, that is, all that is manifestation of managerial functions are governed by the legal norms of administrative law.

Labor legislation governs the part of relations that ensures the realization and protection of labor rights and interests of the subjects of administrative law relations. Civil servants are subject to special disciplinary responsibility. On the other hand, the area of labor law includes organizational-legal relations, since in regulation of the labor process the relations of power are acting such as subjection, similar to the administrative-legal regulation. The legislation establishes responsibility for violating the requirements of labor legislation and the protection of labor, for avoiding participation in negotiations on the conclusion, amendment or addition of a collective agreement, consent[12]. Among the

[11] Якуба О.М. Советское административное право (Общая часть) / О.М. Якуба. – К. : Вища школа, 1975. – С. 38.

[12] Жарков Г.М. Трудове право України: підручник. – К.: Ленвіт, 2007. – 428 с.; Трудове право України: Підручник / За ред.. Н.Б.Болотіної, Г.І.Чанишевої. – К.: Т-во «Знання», 2000. – 564 с.; Дмитренко Ю.П. Трудове право України : підручник / Ю.П.Дмитренко. – К.: ЮрінкомІнтер, 2009. – 624 с.; Трудове право України Навчальний посібник / За ред П. Д. Пилипенка – К.: Істина, 2005 –208 с.; Трудове право України: Академ. курс: Підруч. /А. Ю. Бабаскін, Ю. В. Баранюк, С. В. Дріжчана та ін.; За заг. ред. Н. М. Хуторян. – К.: Видавництво А.С.К., 2004. – 608 с.

types of penalties are corrective works that take place at the place of full-time work of the person who committed the offense[13].

Such theoretical accumulation has already led to the complication of legislation that requires fundamental changes. Therefore, it is necessary to return to the essence of certain public relations governed by law. And if we are talking about the fact that service is a kind of work, then the issue of registration for service, attestation, dismissal, and retirement provision should be considered within the framework of labor law as special aspects of legal relations in the field of labor.

Actually, scientists and practitioners are moving in this direction, creating a collection of legislation on labor, which clearly demonstrates the current state of the branch and is easy to use in law enforcement practice. One should mention among these, a collection with incorporation elements of the publishing house "The Center for Educational Literature" – "Labor Relations. Legislation, international conventions, judicial practice, methodical recommendations, clarifications".[14] It contains international and national normative legal acts in the field of labor relations, enabling determination of the degree of Ukrainian legislation compliance with the international standards, revelation of possible collisions and gaps in current law. It is considered that in the future, when carrying out codification of legislation in the labor relation field, such collections will play a system-forming role, the role of the basis on which the renewed legislation will be based.

3. Codification as an Ultimate Goal in Reforming Legislation System

Effective legal support for administrative reform involves further systematization of administrative legislation, primarily through its codification. It is always associated with deep and comprehensive processing of the current legislation and making significant changes to it. The codification provides internal coherence, integrity, systematicity and completeness of legal regulation of the relevant relations.

Today it should be noted that in the administrative law of the post-Soviet period there were tectonic changes. The whole continent of the theory of state administration broke off from the general set of administrative law. It is at a time when the relations in state administration

[13] Трудове право : підручник / під ред. В.В. Жернакова. – Х. : Право, 2012. – 496 с.

[14] Трудові відносини. Законодавство, міжнародні конвенції, судова практика, методичні рекомендації, розяснення. Практичний посібник / Григоренко. – К. : Центр навчальної літератури, 2016. – 344 с.

are the subject of administrative law study. However, such shift has led to other consequences. In the depths of administrative law, new legal branches have emerged: financial, information, customs, and medical law. They are developing dynamically and in the scientific and practical sense, they have achieved significant results. And this in turn contributes to the new cyclic-like movement. Namely: scientists state that there is a dual nature in these sectors: public and private. Thus, they can not be part of the administrative law. Administrative law is purely public. Is there any contradiction? – Not at all.

We can look at the very list of so-called administrative (managerial) misconduct: Art. 45 "Evasion of examination and prophylactic treatment of people with STD», Art. 178 "Drinking of beer, alcoholic, low-alcohol beverages in places prohibited by law or appearing drunk in public places", Art. 176 "Manufacture, storage of home-made alcohol and apparatus for its production". However, administrative responsibility is the managerial responsibility, that is, the responsibility of the person, entitled by the authorities with powers and the corresponding administrative-legal status. While in most articles we can see public legal relations not related to non-fulfillment or improper fulfillment of their duties. Obviously, in this case, a person can not bear the administrative (managerial), responsibility because they are not the subject of powers of authorities; do not perform the relevant administrative functions.

We can see that the legislation ignores the elementary basic provisions of the law theory. However, other illogical things happen too. The essence of a phenomenon is in the following. Representatives of certain departments, business groups, deputy assistants, etc., develop novels to the law according to their "worldview approaches". The quality of such novels is evidenced by a series of economic and political crises that have shaken the last thirty years of the post-Soviet state. It is sad, but today monographs and textbooks on the law turned into a list of eminent scholars and their views "on the subject" in combination with commentary on legislation. At present, it is not practice that is based on scientifically proven postulates, verified by time, but scientists justify and "support" regulatory acts theoretically.

We emphasize that the basic foundations of law are unchanged despite changes in public relations. This applies both to law in general and administrative law in particular. Therefore, reviewing the foundations of legislation, one should rely, firstly, on the basic postulates of law, and

secondly, take into account the changes that have taken place in society – the change of the socialist system to the capitalist one.

Attempts to answer complex questions related to the redesigning of public relations under the latest conditions are made by scholars based on modern concepts, the essence of which is the fractal paradigm of building fields, institutions, branches, etc. Alexey Almazov in his book "Fractal Theory. How to change the view of markets", suggested the use of fractals in the analysis of stock quotes, Andrew Morrison Stumpf analyzes legislation from fractal positions in his work "Legislation is a fractal: an attempt to anticipate everything".

Administrative law is one of the elements of a holistic system. As well as other parts of the law, administrative law is modified according to the general rules of the system existence, and therefore the transformation of administrative law can be predicted, analyzed, and calculated. And, accordingly, some inconsistencies can be found in them as well as contradictions can be eliminated, and so on.

The algorithmic method implementation is possible at all levels of jurisprudence, in scientific dimension for cognition of the essence of legal phenomena, in law-making for improvement of existing formulas (norms, laws) and the proof of new law enforcement and judicial authorities in the enforcement activities for the proper resolution of disputes that arise between different subjects of legal relations. Just as other sciences cognize the world around with various methods, instruments, reagents, etc., the law science studies relations in society. A large number of questions remain beyond our cognition in both natural sciences and social branches. We can not fully predict the consequences of one or another of our actions. Many issues have previously remained; others have still remained outside the law. What was previously normal for a society, such as cutting scalps, is now disapproved. And if earlier actions of the ruler, even if they were immoral, were perceived as a manifestation of God's will, now they cause the condemnation of society.

Codification is the most perfect form of legislation systematization. The legal purpose of codification is to get in order the normative basis of law, to ensure the most effective process of law implementation, to improve the structure of codification acts, to improve their logic, language, and style. Usually, codification (as opposed to incorporation) is based on the system of law, although it can not completely coincide with it.

Codification is an essential system-creating and stabilizing factor of the entire legal system and it contributes to the organized development of law, fills it with common principles, general legal concepts and categories. Adoption of codification acts as a result of codification is aimed at strengthening the element of stability in the legislation and the formation of a stable normative and legal framework.

Codification is the sorting out of legal norms, accompanied by the reviewing of their content, with the cancellation of some and the adoption of other legal norms, which is possible only in the process of law-making. As a result of the codification issued a single, logically and legally integral, normative legal act. Therefore, codification always has an official nature and can be carried out only by the law-making body.

Today norms, formed in the depths of administrative law in the period of the state-centered approach greatest development, are playing a role of a synergistic catalyst in the formalization of legal norms in various socio-economic domains. The emergence of a new system of Ukrainian law with division in accordance with the areas of application: medical, fire-preventive, construction, sports, etc., as science, as legislation, as a practical right-exercising activity, has now been fully in line with the realities.

Codification is the activity carried out by law-making bodies.

There are the following types of codification:

- by volume: general, as a result of which a codified normative act is created on the main branches of law (a code of laws); branch, covering regulatory legal acts of a certain branch of legislation (the basis of legislation, codes); inter-branch and sub-branch (institutional), which covers several branches (Air Code) or institutes (Customs Code) accordingly.
- By the form of expression: basics (main principles) of legislation; codes; provisions; chapters.

Codification legal acts are divided into:

- Basics of legislation: codification act, containing the most common norms and stipulates goals and principles of legal regulation of a certain group of social relations;
- The code – a single, consolidated, legally and logically holistic, internally agreed normative legal act that ensures the regulation of public relations in the relevant branch or sub-branch of legislation.

Unlike the norms of some law branches, it is impossible to unite all norms of administrative law in one or even in several complex (codified) acts for objective reasons. Administrative law governs a wide range of public relations. It contains norms in numerous acts of various legal force. Moreover, norm-making in the administrative field is characterized by a high level of dynamism, frequent emergence of new norms, complicating the content and structure of legal material and limiting the possibility of its codification.

It should also be kept in mind that one or another branch of law, unlike the branch of legislation, should not have "personal" codes. For example, procedural law covers all activities of state bodies, economic and other activities. One or another code may "cover" several branches of law. Thus, licensing law regulates the issue of licenses for the extraction of minerals, the sale of medicines, etc., and the permissive law regulates the use of weapons, the vehicles driving, and permission for certain activities. They are closely linked with each other.

There is a range of codes: the Customs Code, Tax Code and others. It is extremely necessary to systematize legislation on public health. The structure and content of the Medical Code have been already given in a number of studies. Leading scholars and practitioners emphasize the creation of the Road Traffic Code and the Registration Code. The main difference of the updated legislation will be its compliance with modern standards and algorithms of the law theory. Thus, it is necessary to adhere to the principle of the norm updating in the structure of each normative act, so the hypothesis, disposition and sanction will be contained in one codification act. Certain studies of the area mentioned in systematization of administrative legislation in the form of its codification, have been discussed in the works of leading and young scientists more than once[15]. The necessity in adoption of the Electoral Code has already been emphasized repeatedly. It is to the code mentioned where misconduct against the electoral rights of citizens must be transferred[16].

[15] Народний суверенітет, як основа адміністративно-правової реформи в Україні: навч. посіб.; за заг. ред. В.П. Пєткова. – К. : Дакор, 2012. – 216 с.; Безпека дорожнього руху в Україні: : навч. посіб.; за заг. ред. В.П. Пєткова. – К. : Дакор, 2012. – 488 с.; Народне волевиявлення в Україні : навч. посіб.; за заг. ред. В.П. Пєткова. – К. : КНТ, 2012. – 144 с.; Санітарно-епідеміологічна безпека : навч.посіб.; за заг. ред. В.П. Пєткова. − К. : Видавничий дім «Скіф», 2013. − 128 с.; Екологічна безпека : навч.посіб.; за заг. ред. В.П. Пєткова. − К. : КНТ, 2013. − 216 с.; Реєстраційне право: навч. посіб.; за заг. ред. В.П. Пєткова. – К. : Дакор, 2012. – 216 с.

[16] Циверенко Г.П. Народне волевиявлення в Україні : навч. посіб. / Г.П. Циверенко. – К. : СКІФ, 2012. – 144 с.

And it tells about the global processes of systematization (incorporation and codification) taking place in our country. Significant changes have also occurred in the administrative law itself, both at the territory of Ukraine and at the whole post-Soviet space, and even in the leading countries of the world. Such processes are fully consistent with old legal tradition and modern world practice[17].

It should be done for the formation of modern legislation that will govern public-legal relations in accordance with modern world standards and constitutional provisions. In addition, the norms and a number of different by-laws will find their place in the legislation during the codification, which will simplify their application.

In total, due to a definite approach to public law, we will achieve the following goals: humanization of the legal system, compliance with the provisions of the constitution of Ukraine. So, the law will correspond to the essence of civil law. Simplicity and clarity of laws for citizens will affirm the democratization of society.

Due to increased tension in society, an increase in the number of misconduct by citizens in all domains of socio-economic life, deterioration of public attitudes towards public authorities, and reduced manageability both in the system of state authorities and from public authorities by social processes taking place in the country, there is an urgent need for the country to update the normative and legal framework for the activity of state power bodies and make them comply with the world standards.

For example, in order to ensure public safety and public order, there are many rules and norms of behavior established by normative and legal acts of various levels, namely, the Fire safety rules, Regulations on the organization and conduct of mass events, the Law of Ukraine "On measures for the prevention and reduction of the tobacco product use and their harmful effects on the health of the population" and many others. Due to its quantity and incoherence of tort norms, it produces conflicts and difficulties in their application. So bringing the rules of conduct in society and the bases of responsibility for their violation to a single standard enshrined in one normative legal act will greatly increase the effectiveness of the protection and maintenance of public order. The solution to this is adoption of the Code of Ukraine on public order, which

[17] Кабрияк Р. Кодификации / Пер. с фр. Л.В. Головко. – М. : Статут, 2007. – 476 с.

will facilitate the development of Ukrainian legislation in the filed of administrative principles of the protection of human rights and freedoms, in accordance with world standards, and education of citizens in a spirit of respect for the law and the state.

CONCLUSIONS

Public authorities are required to direct their regulatory influence in full on the private law sector, including economic and legal relations. Administrative law should ensure favorable and equal conditions of operation for all business entities and their protection from negative influence from any side, including from the state.

The system of granting licenses, permits, conducting registration, etc., requires radical changes in the direction of information provision and simplification of procedures. Firstly, it should be regulated as much as possible. The submission of documents should be based on the "Single window" principle, when a limited number of documents are submitted for permission to the relevant institution. For example, a title document, an application and a certified identity card. And the issue is solved within a short time – a day or a week. Secondly, there must be transparency of actions, openness of registers, system of state protection of personal data, key system and admissions to information bases. Thirdly, removing of unnecessary red tape of legal relations. Transfer of a number of functions to non-state institutions and organizations. It concerns insurance, pension, property protection, etc.

Effective legal support for administrative reform involves further systematization of administrative legislation, primarily through its codification. Since it is objectively impossible to codify the norms of administrative legislation at the same time and in one act, it is reasonable to carry out step-by-step codification of certain domains and institutions of administrative-legal regulation. Today, it is necessary to create new regulatory laws for the proper functioning of socio-economic areas. The codification of existing rules, norms, orders, and standards governing the socio-economic area in one communicative normative legal act is the need of the present. We emphasize that sorting out of administrative law should be carried out through the issuance of codified acts for certain domains and institutions of administrative and legal regulation.

SUMMARY

The article deals with the issue of administrative law reform in the context of human rights. Forming a democratic, social and law-governed state in Ukraine requires bringing a system of Ukrainian law in compliance with such principles on which the respective systems of developed countries around the world are based, in particular in European countries. Considering the issue of adjusting of Ukrainian law to European standards, one should say about the dualism of law, that is, its division into private and public, which, although not officially consolidated, in fact, exists in Ukrainian law.

Effective legal support for administrative reform involves further systematization of administrative legislation, primarily through its codification. Since it is objectively impossible to codify the norms of administrative legislation at the same time and in one act, it is reasonable to carry out step-by-step codification of certain domains and institutions of administrative-legal regulation.

The system of granting licenses, permits, conducting registration, etc., requires radical changes in the direction of information provision and simplification of procedures.

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PECULIARITIES OF CRIMINAL LIABILITY REGLAMENTATION FOR COERCION TO MARRIAGE ACCORDING THE LEGISLATION OF EUROPEAN COUNTRIES

Syngaivska I. V.

INTRODUCTION

The unification of criminal legislation is the most powerful method of international law influencing on national criminal-law systems. In accordance with Article 9 of the Constitution of Ukraine, the national implementation of legal regulations is possible either by amending the law or direct application in the internal law as a part of the national legislation. Considering defined development vectors Ukrainian criminal and other European states legislation will develop in parallel and increasingly harmoniously and in direction of its further humanization and systematization[1]. Legal literature gives an example of four processes that influence into legislative provision of fighting crime: the globalization of world relations, which also entails negative consequences; significant enlargement of the EU; perception of EU legislation; integration of Ukraine into the EU[2]. Therefore the comparative legal research of criminal liability regulation is the accumulation of law-making practice experience in counteracting of a particular crime, in our research – counteracting of coercion to wedlock.

Marriage (as the first family basis) has a special status in the legal field. It has own autonomy with local rules, according to which the interpersonal relationships of the spouses and family members are formed. Marriage and family relationships are characterized by a certain «effect of iceberg», when generally recognized rules and principles of marriage as a model of family relations have a special interpretation in each wedlock; relations are closed, has a covert character, which protects the secret of private and family life.

[1] Сучасна кримінально-правова система в Україні : реалії та перспективи. Ю.В. Баулін, М.В. Буроменський, В.В.Голіна та ін. К., ВАІТЕ, 2015. С. 468, 484, 548-549 (688 с.)

[2] Буроменський М.В., Стешенко В.М. та ін. Розробка пропозицій змін і доповнень до законодавчих актів щодо Державної програми адаптації законодавства України до законодавства Європейського Союзу в галузі боротьби зі злочинністю. *Питання боротьби зі злочинністю*. Вип.10., Х., 2005. С. 197-200.

De-facto marriage relations can't have a «two-way symmetry», due to the different functions and roles execution of husband and wife in marriage. However, according to principles of equality between women and men the law requires mutual consent for marriage. The right freely to choose a spouse and to enter into marriage only with their free and full consent. (according to Article 16 Part 1, subparagraph «b»of the The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)[3]. The principle of voluntary marriage is valid not only at the stage of its registration, but also during marriage. This leads to the possibility of voluntary dissolution of marriage, according to Article 16 Part 1, subparagraph «c»of the The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) «identical rights and duties during marriage and after its dissolution». Marriage is a family union, where the word «family» indicates that marriage creates a family, and the word «union» emphasizes the contractual nature of marriage, which determines its voluntary nature[4].

Marriage institution of law was formed as a fundamental social institution based on the experience of many generations. In this manner marriage institution is the quintessence of millennial experience of male and female together living (in classical form). Legal regulation of marriage is established with the aim of spouses and children personal and property rights protecting as a guarantees implementation mechanism of fundamental rights and freedoms of citizens. Marriage relations have a basis consisting of customs and traditions, especially regarding the one of the spouse's choice, the process of marriage.

Legal regulation of family relations mainly is carried out through the application of family and civil law rules. Implementation of criminal law for the protection of family relations is carried out in the most socially dangerous manifestations, that is, the commission of a crime.

However, in resolving the issue of criminalization it is important to prevent the revaluation in influence of socio-regulatory capabilities of criminal repression, especially with regard to regulating the sphere of family relations.

[3] Про ліквідацію всіх форм дискримінації щодо жінок: Конвенція Організації Об'єднаних Націй. URL https://zakon.rada.gov.ua/laws/show/995_207

[4] Рішення Жовтневого районного суду м. Дніпро URL: https://verdictum.ligazakon.net/document/74424470

Retrospective analysis of criminal legislation states that «forced marriage» is not new thing in the criminal law history. Thus, it was regulated by the Part 11 «Crimes against the rights of the family» of the «Code of Penalties criminal and corrective» of 1845. Chapter 1 «Crimes against marriage union» is an integral part of Part 11, where criminal-law prohibitions of relating to marriage are defined and set forth in 31 criminal articles (from Article 2040 to 2071 of the Code)[5].

Article 2041 of the Code states that «those who, by the use of violence or the use of violence threat, or in circumstances in which a person could or should have considered himself in danger, would compel to enter into a marriage, was punished by exile for hard labor for a term of four to six years». Qualified composition of a crime was recognized «if forced marriage was preceded by the rape of the same person, the perpetrator was sentenced to a higher degree of punishment». At the same time, the differentiation of criminal responsibility for unlawful marriage depended on the method of a socially dangerous act. According to Article 2042 of the Code, if there was a inclining of a person against her/his will into marriage with the help of beverages or otherwise; use of a state of unconsciousness or frenzy or marry by a deceit not with the person who was previously elected, was sentenced to exile in remote Siberia.

Criminal liability is separately provided for a person, who abducted of an unmarried person for marriage against her will was punished by deprivation of all rights and privileges and to exile and imprisonment for a term from two to three years (Article 2040 of the Code). In the case of consent to the kidnapping of an unmarried person, the punishment was imposed in the form of imprisonment from six months to one year. Article 2073 of the Code stipulated that, if married woman was abducted and deprived of honor by the use of violence or otherwise compelled to enter into an illegal marriage with a person who stole her or another person is sentenced to a higher degree of punishment[6].

Ukraine hasn’t ratified the Council of Europe Convention on the Prevention and Combating of Violence against Women and domestic violence; Istanbul Convention (hereinafter referred to as the «Istanbul Convention») yet, but a number of its provisions have been implemented

[5] Уложеніе о наказаніяхѣ уголовныхѣ и исправительныхѣ 1845 г. Под ред. Н.С. Таганцева. Изд. 5-ге изд. СПб., 1886. С.694

[6] Уложеніе о наказаніяхѣ уголовныхѣ и исправительныхѣ 1845 г. Под ред. Н.С. Таганцева. Изд. 5-ге изд. СПб., 1886. С.695-696.

into national law. The implementation of international criminal law rules is possible through incorporation or transformation. Incorporation means almost verbatim implementation of international law into domestic law. During the transformation international criminal law rules are taken into account in domestic law, or to a lesser extent, or vice versa, additional features are added to norms of international criminal law. It is possible a situation, when according to some features the norm of international criminal law narrows and simultaneously on other grounds expands[7]. Implementation through transformation provides an opportunity to take into account the features of national criminal law, thereby preventing an unjustified competition of norms.

Article 37 of Istanbul Convention defines «Forced marriage» and states that parties use all necessary legislative or other measures to ensure that intentional conduct, which is in coercion of adult or a child to marry, has been criminalized.

Parties use all necessary legislative or other measures to ensure that intentional conduct consisting in ensnaring of adult or child to other (other than he or she resides) party territory of or state, to compel this adult or child to marry, was criminalized

In order to implement the provisions of Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011, the forced marriage was criminalized in national criminal law (Article 151-2 of the Criminal Code of Ukraine).

Implementation of Istanbul Convention provisions was reflected in criminal law of foreign countries by its signing and ratification of European states. The content of Istanbul Convention (article 37) emphasizes the criminalization of willful conduct, which is in coercion of adult or child to marry.

The legislative approach of foreign countries in Istanbul Convention realization of concerning the coercive marriage criminalization is an urgent and unexplored issue to which we'll pay attention within the framework of relevant research.

[7] Иногамова-Хегай Л.В. Международное уголовное право: учебник. М.: Юридический центр, 2003. С. 42-43

1. Basic research material with full basis of received results

There are two positions of coercion marriage criminalization among foreign countries:

1) countries, which distinguish in criminal law the criminal rule of coercion, without its specification, thus a general norm forming (Finland, Hungary);

2) countries, whose criminal law has criminalized coercion marriage (including those, that have a general rule of involving responsibility for coercion) (Great Britain, Norway, Germany, France, Austria, Switzerland, Sweden, Denmark, Belgium, Spain, Bulgaria, Serbia, Montenegro).

Legal literature notes about the shift of domestic criminal-law policy emphasis, which is manifested in the ever-increasing casualty of the criminal law. Analyzing the question of expediency in coercion marriage criminalizing, A. Andrushko notes that experience of such states as: Austria, Belarus, Bulgaria, Spain, the Netherlands, Poland, Hungary, Germany, Sweden, Switzerland deserves an attention, because its criminal law contains a general rule of involving responsibility for coercion[8]. This fact became an additional argument concerning the need in research of coercion marriage comparative aspect. Comparative legal research of 15 European countries (Western and Eastern Europe) has shown that the dominant majority (13 states) consider expedient to criminalize coercion marriage in a separate criminal norm. Among the list of such states are: Austria, Bulgaria, Spain, the Netherlands, the Federal Republic of Germany, Sweden, Switzerland. Forming of a special rule of criminal liability is a non-rational method of legal technology. At the same time, such forming contributes to realization of criminal law preventive function, which has much more effective impact on understanding of criminal liability law for ordinary citizens.

Criminal prohibition on coercion to certain actions is imposed in criminal law of Finland and Hungary[9]. The Criminal Code of Finland contains Part 8, which defines the responsibility for coercion. The content of the disposition is that, in the case of use of violence or threat of violence, he/she should be punished in the form of fine or imprisonment for a term up to two years. In the Criminal Code of Hungary, the criminal norm «Forcing» is contained in Chapter XVIII «Crimes against personal

[8] Андрушко А. Щодо доцільності криміналізації примушування до шлюбу. *Jurnalul juridic national: teorie şi practică*. 2018. № 6 (34). С. 172

[9] Rikoslaki.URL: www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L25

freedom». According to its content any person who makes another person with a help of violent or threat of violence to commit or refrain from committing of any acts, that causes significant harm to person's interests and will be find guilty in a grave crime is punished by imprisonment for a period of not more than three years.

In early 2000s only in Norway among other European countries, the law concerning the prohibition of coercion marriage was in force. In following years, the theme of forced marriages, especially among immigrant youth, has become a serious problem and has been actively discussed by European community for the purpose of solving this problem. Many European states consider that adopting of criminal liability law for coercion marriages is one of the effective ways of combating with this problem[10]. There are general rule of coercion (Article 252 Aggravated coercion) and special criminal norm of forced marriage (Section 253 Forced marriage) in Norwegian Criminal Code.

Personal freedom of a person is an object of relevant act, as evidenced by titles of sections containing relevant norm. The corresponding title of sections that contains a separate coercive marriage norm is reflected in Criminal Codes of Norway, Germany, Switzerland, Sweden, Denmark, the Netherlands, Spain, Montenegro and Serbia. The victim is a person without gender and age rating specification. In criminal law of Norway, the **objective aspect** of the crime is set out in the form of open, alternative list of methods of socially dangerous acts: «unlawful behavior in combination with violence, deprivation of liberty, commission of unlawful pressure force to marry»[11]. Any person who by violence, deprivation of liberty, other criminal or wrongful conductor improper pressure forces a person to enterin to marriage shall be subject to imprisonment for a term not exceeding six years.

The provisions of Istanbul Convention (part 2 article 37) «if, by deception or otherwise, they affect a person to leave the country of residence for the purpose of forced marriage» is contained in foreign legislation of following countries: Norway, Germany, Austria, Sweden, Switzerland, France, Spain, Montenegro and Serbia. So, Part 2 Section 253 "Forced Marriage" of Norway CC contains a provision: The same

[10] Джансараева Р. Е. Современное уголовное законодательство зарубежных государств об ответственности за ранние и принудительные браки. URL: articlekz.com/article/15034

[11] Lov om straff (straffeloven) URL: https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL_2-9#%C2%A7266

penalty shall be applied to any person who by deceit or other means contributes to another person travelling to a country other than that person's country of residence with the intent that the person will there be subjected to Forced marriage[12].

The United Kingdom legislation provides that forced marriages can contain physical, psychological, emotional, financial and sexual violence, including illicit captivity, violence and rape[13]. A forced marriage occurs where one or both spouses are forced into marriage without their consent, or where consent is ostensibly given; there has been duress or coercion. Forced marriages are somewhat different to 'arranged marriages' where parents and relatives may help in the selection or choosing of marriage partners, although the ultimate decision to enter into marriage lies with the person/s entering into a marriage contract[14].

Under the June 2014 reforms, breaches of an FMPO now constitute a breach of the criminal law (although it also retains its civil/family law nature, as FMPOs are issued in the family courts). If the police or the Crown Prosecution Service (CPS) decides to instigate criminal proceedings, a breach of an FMPO can now resultin a term of imprisonment of up to 5 years, although it depends on which route is taken – civil or criminal. Victims who have experienced breaches of FMPOs have dual route stochoose – they can either choose to enforce breaches in either of thecivil or criminal jurisdictions (but not both). The offence of Forced Marriage separately can also result in perpetrators be ingsentenced up to 7 years for forcing a person into marriage (even if there is no FMPO in place). With criminal proceedings, there is the possibility that control will be taken a way from victims – with the police and CPS deciding to go a head with criminal prosecutions, potentially ignoring the wishes of victims. This could lead to cat a strophic consequences, especially if the victim states that they may be harmed or even killed for shaming the family if a prosecution is brought. Then ewlawis complicated by the fact that perpetrators are often family members, including parents and lovedones. While victims may want to escape forced marriages, some may not want to see their mothers or

[12] Lov om straff (straffeloven) URL: https://lovdata.no/dokument/NL/lov/2005-05-20-28/KAPITTEL_2-9#%C2%A7266

[13] Forced marriage now a crime URL: www.gov.uk/government/news/forced-marriage-now-a-crime

[14] Maz Idriss The Problem with Forced Marriage Legislation URL: http://www.safelives.org.uk/practice_blog/problem-forced-marriage-legislation

fathers prosecuted because of the love and emotional attachments involved. Thus, some victims may choose to tolerate forced marriages to avoid parents being prosecuted[15].

Chapter 237 of Criminal Code of Germany defines the responsibility for coercive marriage with the use of violence or threat of violence[16]. It also provides the responsibility of a person who acts for the purpose of forced marriage with the use of violence, threats of violence or deception associated with moving to a territory or preventing return from there which is not within the scope of FRG Criminal Code.

According to Article 222-14-4 Criminal Code of France, contained in «Chapter II: Attack on the physical or psychological integrity of a person» contains very concise legislative provision, which essentially reflects the provisions of Article 37 of Istanbul Convention: liability in case of coercion the person to enter into marriage or marriage abroad with use of deception in order to leave the person of republic territory[17]. Such a legislative approach is recognized by Montenegro and Serbia.

Chapter 19 of Montenegro Criminal Code, which deals with «Criminal Offenses against Marriage and Family», contains Article 248 «Conclusion on Invalid Marriage». Part 2 of this Article provides the responsibility for coercion to marriage by using violence or threat of violence, in the case of incitement to go abroad for the purpose of forced marriage shall be punishable by imprisonment for a term of three months to three years[18].

Chapter 19 of Serbia Criminal Code defines crimes against marriage and family in art. 187 «Forced marriage». The relevant article is valid from 01.06.2017 and provides person's responsibility for coercion marriage with violence using or threats of violence Also, the criminal norm provides the liability in the case of facilitating in setting out of foreign country for forced marriage[19].

The Penitentiary Code of Belgium contains Chapter XI, which deals with responsibility for coercion marriage and forced cohabitation. Belgian criminal law norms of responsibility for coercion marriage and cohabitation are valid from 03.10.2013. Disposition of Article 391 of

[15] Maz Idriss The Problem with Forced Marriage Legislation URL: http://www.safelives.org.uk/practice_blog/problem-forced-marriage-legislation

[16] Strafgesetzbuch URL: https://www.gesetze-im-internet.de/stgb/

[17] Code pénal URL:http://codes.droit.org/CodV3/penal.pdf

[18] Кривични законик Црне Горе URL:http://www.mpa.gov.me/biblioteka/zakoni

[19] Кривични законик URL:wipolex.wipo.int/en/text/441512

Belgium PC states, if a person by force or threat of violence has forced a person to marry, there will be a punishment in the form of deprivation of liberty from 3 months to 5 years and a fine of 150 to 5000 Euros. Although Art. 391 regulates the coercion to cohabitation by violence or threat of violence (penalty of 3 to 5 years' imprisonment and a fine of 250 to 5000 Euros). Separately, legislator punishes for attempting to coerce into marriage and cohabitation (from 2 months to 3 years and a fine of 125 up to 2500 Euros)[20]. Consequently, there are identical sentences in the form of liberty deprivation for marriage coercion and forced cohabitation. However, in the case of fine imposition as additional mandatory punishment, it should be noted, that the lower limit of collecting money for coercion cohabitation is higher (250 Euros) in comparison with fine for coercion marriage (150 Euros). Property punishment for the attempt to coercion marriage is determined by a half amount of the main fine.

From 01.01.2016 Austria Criminal Code has a current norm in chapter 106a «Forced marriage». Although Austrian legislator provided separate rules of coercion (§ 105) and severe coercion (§ 106). Article disposition has a details exhaustively list of methods of socially dangerous acts that are emphasized in the content of the research. Thus, Chapter 106a of Austria Criminal Code provides that persons who coerce a person by violence or threat of violence or under the threat of family relationships termination for the purpose of marriage or civil partnership establishment[21].

Realization of Istanbul Convention prescription of Part 2 Art. 37 in Austria Criminal Code is reflected in following statutory provision: a person who is compelled to marry or to establish civil partnership in a foreign state whose nationality it is not recognized or does not have its habitual residence under the influence of deception or use of violence; or the danger of violence use; or under the threat of termination or dissolution of family contacts with family members, is punishable under paragraph 106 of Austrian Criminal Code. The peculiarity of Austrian legislative concerning responsibility for marriage coercion is in qualified composition determine: «If marriage coercion leads to suicide or to

[20] Code pénal de Belgique URL: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?DETAIL=1867060801%2FF&caller=list&row_id=1&numero=2&rech=4&cn=1867060801&table_name=LOI&nm=1867060850&la=F&dt=CODE+PENAL&language=fr&fr=f&choix1=ET&choix2=ET&fromtab=loi_all&trier=promulgation&chercher=t&sql=dt+contains++%27CODE%27%26+%27PENAL%27and+actif+%3D+%27Y%27&tri=dd+AS+RANK+&imgcn.x=41&imgcn.y=12#LNK0095

[21] Strafgesetzbuch Republik Österreich URL:https://www.jusline.at/gesetz/stgb/paragraf/106a

attempt of suicide is punishable by imprisonment for a term of one to ten years».

For example, Spanish Penal Code contains Chapter III, «Restrictions against Individuals», which include the section «Offenses against Family Relations», which contains a provision that provides a liability for coercion to marriage. Article 172 of this Penal Code was in force from 01.07.2015. It is provide the liability for the threat of violence or violence as a coercion of another person to marriage and the punishment is imposed depending on severity of coercive or means used. The Penal Code of Spain has criminalized the use of violence, threats of violence or deception against a person for the purpose of coercion marriage outside the Spanish territory. There is punishment in form of imprisonment from six months to three years and six months, or a penalty of twelve or twenty four months for relevant acts. A fine will be imposed to the maximum limit in the event of a juvenile coercion[22].

In Switzerland Criminal Code marriage coercion belongs to felonies and misdemeanors against Liberty. Art.181a of Switzerland Criminal Code states: any person who, by the use of force or the threat of serious detriment or other restriction of another's freedom to act compels another to enter into a marriage or to have a same-sex partnership registered is liable to a custodial sentence not exceeding five years or to a monetary penalty. The same punishment is foreseen for coercion marriage abroad[23].

In 2014 Part 4 "Crime against freedom and peace" of Criminal Code of the Kingdom of Sweden was supplemented by two rules of coercion marriage in connection with ratification of Istanbul Convention on July 1, 2014. Part 4c stipulates that any person, who illegally compels to marriage that is in force in the state in which it is concluded or in accordance with the law of the state where the marriage was concluded, or in a state in which at least one of the spouses is a citizen, is punished to imprisonment for four years' maximum. This law also applies to a person who forces a person to enter into marriage-like relationship, if it is concluded in accordance with rules according to which the parties are considered as spouses and are given the corresponding rights or duties with respect to each other is punished to imprisonment maximum for four years maximum. Part 4d specifies that a person who, by deception, induces

[22] del Código Penal URL: https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444

[23] Swiss Criminal Code URL: www.legislationline.org/download/action/download/id/7397/file/Swiss_CC_1937_am2017_en.pdf

another person to travel to state, other than, in which he/she resides for the purpose of unlawful coercion; or use of a vulnerable state for entry into marriage is sentenced to imprisonment maximum for two years[24].

The introduction of criminal liability for informal and unofficial forms of marriage, that are not legally effective, but in practice are marital, was initiated in Sweden. In addition, the issue of forced marriages is considered together with the problem of «child marriages» of persons under the age of 18. Issues related with the criminalization of children's marriages, which are not legally binding and which are made in accordance with traditions or religious peculiarities of some groups are recognized the most difficult. Organizers and enforcers of coercion marriages should be punished up to 4 years of prison. Parents or guardians, who allowed their children up to 18 to get married or to marry threatens up to 2 years in prison or a fine. According to the Swedish Department of Youth Affairs, more than 70000 people of a country cannot independently choose their spouses[25].

Article 260 of Chapter 26 «Crimes against Freedom» of Denmark Criminal Code provides the responsibility for coercion. Therewith, Section 2, Art. 260 of Denmark Criminal Code states that in the case of coercion marriage, the terms of imprisonment may be extended to four years[26].

Article 284 of Netherlands Criminal Code stipulates responsibility for enforcing marriage: «Any person who: 1) illegally forces another person to act or refrain from certain actions or to endure certain acts by resorting of violence or any other act; or threat of violence or threat of other acts against another person or persons; 2) forcing another person to act or refrain from certain actions or to endure certain actions by threatening of slander[27].

Peculiarities of criminal liability regulation for coercion marriage according to Bulgaria Criminal Code consist in the fact that the legislator differentiates responsibility depending on the types of accomplices of the criminal act and victim's age. Thus, Part 1 of Art. 177 of Bulgaria

[24] Criminal code of the Kingdom of Sweden Brottsbalk URL: https://lagen.nu/1962:700#K4P4cS1

[25] Джансараева Р. Е. Современное уголовное законодательство зарубежных государств об ответственности за ранние и принудительные браки URL: articlekz.com/article/15034 Вестник казанского университета 2014 www.euromag.ru/sweden/21915.html

[26] Straffeloven URL: https://www.retsinformation.dk/Forms/R0710.aspx?id=202516#id484ab143-37b0-42da-992b-e2e87cf93d9b

[27] Wetboek van Strafrecht URL: https://maxius.nl/wetboek-van-strafrecht

Criminal Code provides: a person who has induced another in compulsory manner to enterin marriage, and therefore the marriage was proclaimed null and void, shall be punished by deprivation of liberty for up to three years. In accordance with Part 2 of Art. 177 of Bulgaria Criminal Code: a person who abducts a person of the female gender for the purpose of forcing her to enterin to marriage, shall be punished by deprivation of liberty for up to three years. If the victim is not of full age, the punishment shall bedeprivation of liberty for up to five years. However, in Art. 178 of the Criminal Code of Bulgaria is determined if a parent or another relative who receives compensation to permit his daughter or relative to conclude a marriage, shall be punished by deprivation of liberty for up to one year or by a fine from one hundred to three hundred BGN(as an equivalent of 1504 to 4514 hryvnias), as well as by public censure. The same punishment shall also be imposed on a person who gives or mediates in the giving or receiving of such compensation[28].

There are two positions of coercion to marriage singled out in foreign countries legislation:

1) as an attack on personal freedom (Norway, Germany, Switzerland, Sweden, Denmark, the Netherlands, France, Spain, Austria);

2) as an attack on marriage and family relations (Bulgaria, Belgium, Montenegro, Serbia).

The use of violence and threats of violence are typical and alternative methods of coercion to marriage. However, there are some exceptions. Thus, in Austrian CC forced marriage under the threat of breach or termination of family relationships with family members is recognized. In Switzerland criminal law the disposition is formed with an open list of alternative ways of coercion to marriage: «another restriction of freedom action.» The threat of slander and use of direct slander are determined in the Criminal Code of the Netherlands, besides typical and alternative methods of coercion to marriage. According to Article 151 of Ukrainian Criminal Code «coercion» is a crime-forming feature, which is determined by a socially dangerous and unlawful act. Forming a criminal law prohibiting of forced marriage, Ukrainian legislator doesn’t follow the list of socially dangerous methods, leaving the interpretation of this issue for law enforcement practice.

[28] Criminal Code of the Republic of Bulgaria URL: http:legislationline.org/documents/action/popup/id/8881/preview

In regard to actions related to transfer of a person to another territory for the purpose of forced marriage, the legislation of most states (9 out of 15 examined), containing the relevant prescript, provides such methods of coercion as: use of violence, threats of violence and deceit. Swedish legislation is also mentioned the use of person's vulnerability as a method of coercion. Ukraine has also unified the criminal legislation with provisions of Istanbul Convention (Part 2 Article 37), providing the liability for inducement to move to a territory other than that in which it resides for the purpose of coercion to marriage.

According to criminal law of Belgium, Austria, Sweden and Ukraine the responsibility for coercion cohabitation is provided, besides coercion to marry. Switzerland, legislator singles out a special form of coexistence – forced registration to same-sex partnership.

The peculiarity of Ukrainian criminal legislation is the criminalization of coercion to marriage and forced co-habitation. The theory of Ukrainian family law distinguishes following types of cohabitation: actual marriage, guest marriage, open marriage, communal, rational marriage, seasonal marriage, homosexual marriage (same-sex marriage)[29].

Actual marital relations are not equal with registered marriage. It isn't recognized as marriage at all, because marriage is a family union of woman and man, registered with the state body of civil status acts registration. In accordance with Part 2 Art. 21 of Ukrainian Family Code, living like one family does is not grounds for the appearance of rights and responsibilities of spouses. According to Part 2 Art. 3 of Ukrainian Family Code, the family consists of persons who are jointly living in a common life and have mutual rights and obligations. Living of man and woman like one family does without marriage registration is a special (determined by the law) reason for the establishment of certain rights and obligations. The fact of one family living without marriage registration is confirmed by the common budget, common household and common life, in other words, between partners should formed relationship that is inherent of marriage. Taking into account the relevant provisions, Ukrainian legislator criminalized coercion to cohabitation, besides forced marriage, that is considered to be a reasonable step.

[29] Войнаровська О. Фактичні шлюбні відносини як одна із форм співжиття жінки та чоловіка. *Юридична Україна.* 2015. № 3. С. 45

Issues of punishment for coercion to marriage also have a number of legal and technical features of criminal liability regulation for coercion to marriage.

In regard to issue of punishment for coercion to marriage European legislators have unequivocal position and determine the punishment in the form of imprisonment. There are relatively penal sanctions in the form of imprisonment in countries such as: Norway, Belgium, Austria, Sweden, Bulgaria and Denmark. A number of states have found expedient to form a relatively-defined sanction with a minimum and maximum limit. Among such states are: Germany (from 6 months to 3 years of imprisonment), Austria (from 3 months to 5 years of imprisonment), Belgium (from 3 months to 5 years of imprisonment), Serbia (from 3 months to 3 years of imprisonment), Montenegro (from 6 months to 5 years of imprisonment).

Some states form relatively limited sanctions with only the maximum (upper) limit of punishment: Norway (up to 6 years' imprisonment), Sweden (imprisonment up to 4 years), France (imprisonment up to 3 years), Denmark (imprisonment up to 4 years) and Bulgaria (up to 3 years of imprisonment).

However, according to Austrian Criminal Code, the punishment for coercion to marriage may be up to 10 years' imprisonment if, as results of coercion are serious and lead to suicide or to suicide attempt. In accordance with Part 2 Article 151-2 of Ukrainian Criminal Code, a qualified composition of coercion to marriage in the case of actions committed repeatedly or by a prior conspiracy by a group of persons, or in respect of a person who in accordance with the law has not reached the age of marriage; or in respect of two or more victims, provided punishment by restraint of liberty for a term up to five years or imprisonment for a term up to five years. Also, Part 2 Article 177 of Bulgarian Criminal Code states, if victim has not reached the age of majority, the offender will be sentenced to imprisonment for a term up to five years. Part 3 Art. 172 of Spanish Criminal Code contains that fines are determined according to the maximum limit if the victim is a minor[30]. Separately, Article 216 of Criminal Code of Montenegro provides that adult's living in extra-marital relationship with a minor is punished by

[30] del Código Penal URL: https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444/

imprisonment for a term of three months to three years. If marriage is contracted with a minor, the prosecution is not carried out[31].

Criminal law of foreign countries contains such sanctions that are alternative by their constructive characteristics. For example, in the UK (up to 5 years in prison, in some cases up to 7 years or a fine), the Netherlands (up to 9 months imprisonment or a fine of up to 8200 Euros), Spain (from 6 months to 3 years 6 months or a fine of 20-24 months), Switzerland (up to 5 years' imprisonment or money collection). Part 4 Section 237 of Criminal Code of Germany is determined that in less socially dangerous cases, a punishment for coercive marriage up to 3 years of imprisonment or a fine may be imposed.

During comparing, it was determined that dominant majority of Europe states formulate relatively precisely defined sanctions as opposed to alternatives, which reflects public danger recognition of a crime and narrowing the discretion regarding the issue of punishment. It is possible to identify two cross-border lines that are observed in determining the maximum term of imprisonment: up to three years and up to five years as the "second line" and deprivation of liberty as maximum term.

There is an alternative sanction for coercion to marriage that provides an arrest of up to 6 months or a restraint of up to 3 years, or imprisonment for up to 3 years in Art. 151-2 of Ukrainian CC. The determined sanction of national legislation compared with legislative experience of other European states is milder, because it provides milder punishments – arrest and restraint of liberty.

The formulation of cumulative sanctions also takes place in legislative practice. Thus, France, in addition to imprisonment, also provides a fine of up to 45,000 Euros that is very strict property restriction. Belgium's criminal law defines punishment from 3 months to 5 years imprisonment and a fine of 150 to 5000 Euros for analyzed crime.

Consequently, a fine as a property penalty should be appointed as alternative or mandatory additional punishment (Germany, France, Switzerland, the Netherlands, Spain, and Belgium). Appropriate legislative experience of foreign countries should be borrowed in order to harmonize of national coercion marriage legislation. We recognize that it is expedient to define a fine as a compulsory additional penalty for coercion, in view of sentencing courts practice. So, taking into account the

[31] Кривични законик Црне Горе URL: http://www.mpa.gov.me/biblioteka/zakoni

judicial reporting for 2018, namely p.6 «Report on persons brought to criminal responsibility and types of criminal punishment», 73659 persons are recognized convicts. Among them, the punishment was applied to 55 567 persons, and 28 096 were released from sentence serving with a trial[32]. The dominant types of punishment are a fine (19,857 persons) and imprisonment (13,765 persons). Consequently, number of convicted persons who were released from sentence serving (including those who released from sentence according to Art. 75 of Criminal Code, in connection with amnesty and other reasons) is made up 43%. In this manner and taking into account that a fine as an additional punishment may be imposed only when it is specifically provided in the sanctions of article (part of article) of Special Part of Criminal Code of Ukraine (Article 53 of CC of Ukraine), this is an argument for the expediency of imposing a fine as an additional form of punishment for coercion to marriage.

Regarding the punishment for inducing a person to move to a territory other than that in which she/he resides for the purpose of forced marriage or cohabitation, which is criminalized in the process of harmonization with Istanbul Convention, the position of legislators is not unanimous. Thus, among states that implemented Article 37 of Istanbul Convention, FRN, France, Spain, Norway, Austria, Switzerland and Ukraine determine the same sanctions for coercive marriage and instigation to move to another territory for the purpose of forced marriage. At the same time, Serbia, Sweden, Montenegro consider the incentive to move to another territory for the purpose of forcing marriage less socially dangerous than coercion, that evidenced by certain sanctions of article. Consequently, Swedish legislator in Chapter 4d sets twice less punishment (up to 2 years' imprisonment) for actions involving deception, prompting another person to travel to a state other than that in which he lives for the purpose of illegal coercion or using a vulnerable state to entry into such marriage or marriage partnership. The legislator of Serbia provides maximum sentence of up to 2 years' imprisonment for assistance in traveling abroad for forced marriage. According to Montenegro legislation the incitement to travel abroad for the purpose of forced

[32] Судова статистика України за 2018 р. № 6 «Звіт про осіб притягнутих до кримінальної відповідальності та види кримінального покарання» URL: https://court.gov.ua/inshe/sudova_statystyka/rik_2018

marriage, shall be punish by imprisonment for a term of three months to three years.

During comparative legal analysis of European criminal law sanctions, we note that the minimum term of imprisonment at the maximum limit of sanctions for coercion to marriage is provided in Criminal Code of the Netherlands – up to nine months. Legislators of European states do not foresee arrest or restraint of liberty as a sanction for coercive to marriage. There is the most severe punishment in criminal law of Great Britain: The maximum penalty for the new offence of forced marriage is seven years imprisonment[33].

CONCLUSIONS

European states in dominant majority determine the coercion to marriage as a separate crime. In this context, national criminal law concerning forced marriage is assessed to be fully consistent with current trends of criminal legal protection rights, individual freedom and marriage and family relations in accordance with the criminal law of foreign countries and international treaties (e.x. Istanbul Convention).

There are two positions of coercion to marriage singled out in foreign countries legislation: as an attack on personal freedom (Norway, Germany, Switzerland, Sweden, Denmark, the Netherlands, France, Spain, Austria) and as an attack on marriage and family relations (Bulgaria, Belgium, Montenegro, Serbia).

According to criminal law of Belgium, Austria, Sweden and Ukraine the responsibility for coercion cohabitation is provided, besides coercion to marry. Switzerland, legislator singles out a special form of coexistence – forced registration to same-sex partnership.

The use of violence and threats of violence are typical and alternative methods of coercion to marriage. However, there are some exceptions as: forced marriage under the threat of breach or termination of family relationships with family members; threat of slander and use of direct slander. According to Article 151 of Ukrainian Criminal Code «coercion» is a crime-forming feature, which is determined by a socially dangerous and unlawful act. Forming a criminal law prohibiting of forced marriage, Ukrainian legislator doesn't follow the list of socially dangerous methods, leaving the interpretation of this issue for law enforcement practice.

[33] Forced marriage law sends 'powerful message URL: https://www.bbc.com/news/uk-27830815

In regard to issue of punishment for coercion to marriage European legislators have unequivocal position and determine the punishment in the form of imprisonment.

The provisions of Part 2 Article 37 of Istanbul Convention «if, by deception or otherwise, someone affects a person to leave the country of residence for the purpose of forced marriage» has been transformed into legislation of foreign countries such as: Norway, Germany, Austria, Sweden, Switzerland, France, Spain, Montenegro, and Serbia.

Appropriate legislative experience of foreign countries should be borrowed in order to harmonize of national coercion marriage legislation. We recognize that it is expedient to define a fine as a compulsory additional penalty for coercion, in view of sentencing courts practice.

SUMMARY

This research is devoted to comparative legal analysis of criminal legislation of Western and Eastern Europe countries and Ukraine concerning the issue of criminal liability for coercion to marriage. The signing and ratification of the Istanbul Convention by European states has led to introduction of legislative amendments aimed at countering coercion to marriage. During the research:

– peculiarities of marriage as a social institution were analyzed;

– differences from other types of cohabitation are determined;

– aspects of historical-legal analysis of criminal responsibility for coercion to marriage were revealed;

– issues of criminal responsibility regulation and punishment of coercion to marriage were disclosed.

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LEGAL STATUS OF POLITICAL PARTIES IN UKRAINE: PROBLEMS

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INTRODUCTION

The publication deals with the actual problems of the theory and practice of formation and development of the legal status of political parties in Ukraine, taking into account the positive foreign experience. It is noted that today, particular importance is acquired in national political systems in the countries with parliamentary and parliamentary-presidential governance form. In Great Britain, Italy, Spain, Canada, Germany, Japan and many other states, it is political parties that form parliamentary coalitions and form governments that are called upon to implement the political programs of the members of the parliamentary majority.

The genesis of political parties in Ukraine, in the context of the experience of the political and legal systems of the states of Europe and North America, is explored. It is noted that, despite the long-standing sources, political parties, in their modern sense, appeared in the 19th century. There were the following conditions for their approval: to consolidate in the first constitutions and constitutional acts the rights of citizens to political associations and the right to elect and be elected to parliaments and local legislatures, as well as with the development of modern parliamentarism and the adoption of ideas of civilian control over public authorities. It was during this period that the parties began to legitimately transform their political goals into real political power by the results of parliamentary elections. The first of these were the European liberal parties of the late 19th century.

On the eve of the World War II, a significant number of political parties of a chiefdom nature are being established in the states of Europe. As for the latter, one should mention the CPSU in the former USSR, the National Fascist Party (PNF) in Italy, the NSDAP in Nazi Germany, the Spanish Phalanx in Spain, the Christened Arrows party in Hungary, etc.

A similar landscape of political parties in that time in Europe became one of the preconditions of the World War II.

At the end of 20th century, there were many types and types of parliamentary and extra-parliamentary parties in the world. In particular, V. Beym distinguished the following among them: (1) conservatives; (2) liberals and radicals; (3) social democrats and socialists; (4) agrarians; (5) ethnic and religious parties; (6) Christian democrats and protestants; (7) communists; (8) fascists; (9) the parties of the bourgeois opposition; and (10) the environmental movements, etc.[1]

At the end of 20th-21st centuries, mass political parties appeared in the countries of Central and Eastern Europe. It led to the destruction of the communist regimes (Lithuania, Poland, Ukraine and Czech Republic, etc.), but soon they lost their polarity and disappeared from the political landscape of these states. An example of such an influential political force was the People's Movement of Ukraine (1988).

During the 28 years of Independence of Ukraine, the party political system suffered serious transformations and now, as of January 1, 2019, it is represented by 352 parliamentary and extra-parliamentary political parties, including such popular after the regular elections of the President of Ukraine in 2019 as the Servant of the People party (The political party registered under No. 377 dated March 31, 2016). At the same time, in 2014-2019, the number of political parties in Ukraine grew by one third.

Summarizing the provisions of the law and the views of scholars of law, it is possible to determine that a political party (from the Latin. *pars* means *'part'*; plural form: *partes* means *'parties'*) it is organized on the principles of voluntariness and equality of the community (association) of citizens, united by a common political ideology and legalized by the state in the established manner, which aims at gaining political power in the state through participation in democratic elections and the realization of its political ideology in the internal and foreign policy of the state.

In turn, the functions of political parties are the main directions and types of their influence on society and the state with a view to comprehensively realizing their party political ideology and program at the national level. At the same time, the main functions of political parties in Ukraine, in our opinion, are as follows: the formation and

[1] Демократизация : учебн. пособ. / сост. и науч. ред. : К. В. Харпфер, П. Бернхаген, Р. Ф. Инглхарт, К. Вельцель ; пер. с англ. под науч. ред. М. Г. Миронюка ; предисл., сост. указателя М. Г. Миронюка ; Нац. исслед. ун-т «Высшая школа экономики». – М. : Изд. дом Высшей школы экономики, 2015. – С. 353.

implementation of a certain political ideology and program; development and diversification of the national political system; participation in national and local elections in order to ensure the representation of parties in elective bodies and elected positions; the formation of legislative and other normative project initiatives that embody the program goals and objectives of the political party; establishment and protection of political rights and freedoms of citizens; substantiation and advocacy of political views alternative to the pro-government; political control over the activities of the ruling parliamentary coalition, as well as the activities of the prime minister and the government; interaction with other political parties and public organizations on issues of political activity, etc.

By their legal nature, political parties are non-profit organizations (*NPO*). At the same time, they have the right to own, use and dispose of movable and immovable property, have bank accounts, transport and lease premises, etc. Not infrequently, political parties have intellectual property: political programs, books and party symbols, etc.

In the EU, virtually all states have this mechanism to prevent political corruption. More and more post-Soviet republics (Georgia, etc.) are introducing state funding for political parties. Starting in 2016, this mechanism for preventing political corruption is active in Ukraine and shows some success.

1. Parties in political and legal systems of the 21st century

Political parties are an important component of the political and legal systems and the constitutional order of most modern states of the world, including Ukraine. Multipartyism has become an important feature of the democratization of political and legal processes, even in the smallest states in Europe, with the exception of the Vatican. For example, the following are valid within Andorra political party: Liberal Party of Andorra, the Social Democratic Party of Andorra, Greens of Andorra; the Independent, the Patriotic Union, the Free List progressive civic party in Liechtenstein; the Christian-Social People's Party, the Luxembourg Socialist Workers' Party, the Communist Party of Luxembourg, the Lefts, and the Democratic Parties in Luxembourg[2].

[2] Политические партии мира : энциклопедический справочник ; под общ. ред. Я.А. Пляйса, А.Б. Шатилова. – М. : Полтитическая энциклопедия, 2017. – С. 19-20, 88-91.

In democratic states, political parties become genuine *'fraudsters of personnel'* for the administrations of the heads of state or prime ministers and their governments. Not infrequently, the leaders of modern states are associated with political forces that have brought them to the highest positions in the states. Thus, today Truman is not the US President only, but also the leader of the Republican Party of America, A. Merkel is the Chancellor of Germany and leader of the Christian Democratic Union, E. Macron is the President of France and leader of the Forward! political party. Newly elected in April 2019, the President of Ukraine V. Zelenskyi is leader of the Servant of the People party.

In the 21st century, contemporary thinkers are increasingly reminded of the optimism of F. Fukuyama, who in his world-famous work, *The End of History and the Last Man* (1989), predicted that the consolidation of democracy in the post-Soviet and post-socialist countries was a *'world liberal revolution'*, which led to *'...Universal History, which leads towards a liberal democracy'*[3]. Unfortunately, today the ideas of liberal democracy in Europe, North America and other regions of the world are experiencing their own crisis. It also affected the development of the party democracy of modern states, including the states of Europe.

As the well-known Irish thinker P. Mayer wrote in his Introduction to the Managing the Emptiness: The Blurring of Western Democracy (2011) paper:

'*The era of party democracy has passed. Despite the fact that the parties themselves continue to work, they have lost their connection with the society and participate in such a futile competition that they are no longer capable of securing the preservation of democracy in its present form*'[4].

The popularity of such views is also confirmed by the content of the Manifesto of European Patriots as The European House of Fire, in which liberal democracy is opposed to populism, and states that '... *With this lazy Europe, without elasticity and thought, we must say goodbye. We have no choice. When populism is raging, we must strive for Europe, otherwise we will drown under its waves*...'[5]. This position of the

[3] Фукуяма Ф. Конец истории и последний человек / Фрэнсис Фукуяма ; пер. с англ. М. Б. Левина. – М. : Изд-во «АСТ», 2015. – С. 90-91.

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[5] Маніфест європейських патріотів «Європейський дім у вогні». Електронний ресурс. Режим доступу: http://www.ji-magazine.lviv.ua/2019/europejskyj-dim-u-vogni.htm – назва з екрану.

European liberal democracies is, in essence, an appeal to the return of the values of liberalism, in particular, to the classical party and political systems that are now replaced by populist social movements, *etc*.

At the same time, despite the pessimism of individual scholars and experts on the future of political parties during the crisis of liberal democracy in Europe, they remain an important component of the political and legal systems and the subject of constitutional law. Particular importances in the national political systems are the parties in the states with parliamentary and parliamentary and presidential governance forms. In these states, it is the political parties that form parliamentary coalitions and form governments that are called upon to implement the political programs of the members of the parliamentary majority. This is the content and logic of the parliamentary and governmental political systems of Great Britain, Italy, Spain, Canada, Germany, France, Japan and many other countries of the world.

Political parties cannot be considered part of the state, since, with the exception of the DPRK and some other countries of the world, political positions in democratic states are separated from administrative ones. At the same time, it is difficult to attribute political parties to civil society without reservations, since their main goal is the struggle for political power in the state. All this, as well as the historical experience of becoming and development, predetermines the special legal status of political parties in Ukraine and abroad.

2. Genesis of Legal Status of Political Parties in Ukraine and Located Abroad

Prototypes of political parties, according to M. Duverger, can be found in the Senate of Antique Rome, and in the Sejm of the Polish-Lithuanian Commonwealth (The United Commonwealth of the Kingdom of Poland and the Grand Duchy of Lithuania). Another scientist J. Osborne sees the origins of the first parties in the experience of association of the guilds of the Italian cities (Bologna, Milan, Florence, *etc.)* in the quarterly self-defence that defended the interests of the Polans (from *Popolo* means ‘the people’) before the aristocracy in the 13th century[6]. Instead, K. Gojiev writes about the germs of the first parties in

[6] Осборн Р. Цивилизация. Новая история Западного мира / Р. Осборн ; пер. с англ. М. Колопотина. – М. : Изд-во АСТ, 2018. – С. 285-286.

the medieval Italian principalities, where the Guelphs defended the interests of the trade and artisans, and the Ghibellines as the interests of the nobles and feudal lords, and finds them among the Arminians and Gomarists in the Netherlands and among Educators and Independents in England in the 17th century[7].

In his time, A. de Tocqueville in his *On Democracy in America* work wrote that after the War of Independence in America in the 18th century, there were two parts of the nation: one part tried to limit the power of the people, and the second part to infinitely extend it. This became the basis for the emergence of various large and small political parties.

'*The big parties are hitting French society, it will incite; the first of them break it into pieces, the latter eradicate it; large parties, shaking society, thus largely rescue it, and small, without apparent benefit, sow disagreement*', wrote A. de Tocqueville[8].

However, until the 19th century, in the absence of parliamentary and governmental state systems in their modern sense, political parties did not exist in their modern sense. In this case, situational political groupings in representative bodies cannot be considered a political group of parlament: between them there are differences, typical for spontaneous and organized phenomena[9].

Political parties, in their modern sense, appeared in the 19th century, in the context of consolidating the rights of citizens to political associations and the right to elect and be elected, as well as with the development of modern parliamentarism and the adoption of the ideas of civil society as *'the controller'* of the state in the first constitutions and constitutional acts.

It was during this period that the parties began to legitimately transform their political goals into real political power by the results of parliamentary elections. The first of these was the European liberal parties of the late 19th century, which substantiated the liberal ideology and created their factions in parliaments. Among such liberal parties were the Liberal Party of Great Britain, the Progressive Party in Germany, the Belgian Liberal Party, and others.

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[7] Гаджиев К.С. Введение в политическую науку / К.С. Гаджиев : учебн. ; изд. 2-е, перераб. и доп. – М. : Издат. корпорац. «Логос», 1997. – С. 162-163.

[8] Токвіль А. де. Про демократію в Америці. У двох томах / А. де Токвіль ; пер. з фр. Г. Філіпчука та М. Москаленка : передм. А. Жардена. – К. : Вид. дім «Всесвіт», 1999. – С. 151.

[9] Дюверже М. Политические партии / М. Дюверже ; пер. с франц. ; изд. 4-е. – М. : Академ. Проект; Трикста, 2007. – С. 22-23.

At the end 19th – early 20th centuries, the first petty-bourgeois political parties were formed in Ukraine, among the university intelligentsia of Kyiv, Kharkiv, Lviv, Poltava, Chernihiv and Odessa. Thus, in 1890, the first Russian-Ukrainian Radical Party (RURP) was founded in Lviv, in Ukraine, whose founders were I. Franko, M. Pavlyk and others and in 1896, a leading political party of Galicia was formed the Ukrainian National Democratic Party (UNDP)[10].

In 1900, the Revolutionary Ukrainian Party (RUP) was founded in Kharkiv, the program document of which was the Independent Ukraine work of M. Mikhnovskyi's lawyer. In 1902, a group of radicals led by M. Mikhnovskyi broke away from RUP and created the Ukrainian National Party (UNP), and in 1904, the Ukrainian Social and Democratic Party was separated from RUE. And in 1905, the Party of People's Freedom constitutional-democratic was created in Kyiv. At the same time, in 1903, the Russian Social-Democratic Revolutionary Party (the RSDRP pro-Russian party) was formed. At the same time, most Ukrainian parties were able to prove themselves in power and political activity only during the period of national liberation struggles of the UNR-ZUNR era[11].

In the 20th century, political parties have gained popularity both in states with democratic, and with undemocratic regimes. On the eve of the World War II, a significant number of political parties of a chiefdom nature are being established in the states of Europe. As for the latter, one should mention the CPSU in the former USSR, the National Fascist Party (PNF) in Italy, the NSDAP in Nazi Germany, the Spanish Phalanx in Spain and the Christened Arrows party in Hungary, etc. These political parties were the only or monopolistic dominant in the mentioned states.

As to the threats of one-party states for democracy, the famous American historian T. Snyder wrote the following:

'*The parties that recaptured the state and suppressed the rivals were not at all almighty from the outset. They used the historical moment to exclude their options from political life. Therefore, you need to support a multi-party system and protect the democratic election process*es[12].

[10] Федоренко В.Л. Конституційне право України : підручник ; До 20-ої річниці Конституції України та 25-ої річниці незалежності України / В.Л. Федоренко. – К. : Вид-во «Ліра», 2016. – С. 196.

[11] Федоренко В.Л. Конституційне право України : підручник ; До 20-ої річниці Конституції України та 25-ої річниці незалежності України / В.Л. Федоренко. – К. : Вид-во «Ліра», 2016. – С. 197.

[12] Снайдер Т. О тирании: 20 уроков XX века / Т. Снайдер; пер. с англ. Н. Охотина. – М. Изд-во АСТ : CORPUS, 2018. – С. 29.

It is obvious that a similar landscape of political parties in that time became one of the preconditions of World War II, because the ideology of these parties quickly exhausted the attractiveness of the countries, since its leaders, after coming to power, restructured the totalitarian states. Therefore, the war was considered by the leaders of the mentioned political parties as a way of mobilizing the nation and continuing domestic policy on the international scene.

The corresponding tendency in the development of political parties has also developed in the national liberation movement of Ukraine. Thus, in 1940, the division of the Organization of Ukrainian Nationalists (OUN) into two ideological wings took place: supporters of S. Bandera and sympathizers of A. Melnyk[13].

In the post-war period, the ideological palette of political parties in the states of Europe, with the exception of the former USSR and the so-called *'the socialist camp'* (Albania, Bulgaria, the GDR, Poland, SFRY, Romania, Hungary and Czechoslovakia, etc.) and Spain during the Franco dictatorship expanded considerably. The political parties of the liberal-democratic and social-democratic directions have gained considerable popularity.

At the end of 20th century, there were many types and types of parliamentary and extra-parliamentary parties in the world. In particular, V. Beym distinguished the following among them: (1) conservatives; (2) liberals and radicals; (3) social democrats and socialists; (4) agrarians; (5) ethnic and religious parties; (6) Christian democrats and protestants; (7) communists; (8) fascists; (9) the parties of the bourgeois opposition; and (10) the environmental movements, etc[14].

At the same time, the undeniable achievement of the constitutional law of the second half of the 20th century became the regulation of the legal status of political parties in the constitutions and other acts of the current constitutional legislation. Thus, the Basic Law of the Federal Republic of Germany (FRG) (Art. 21), the Spanish Constitution (Art. 6), the Italian Constitution (Art. 40), the Polish Constitution (Art. 11), the

[13] Мірчук П. Акт відновлення Української державности 30. червня 1941 року: його генеза та політичне й історичне значення / П. Мірчук. – Ню Йорк : Видання Головної Управи Організації Оборони Чотирьох Свобід України, 1952. – С. 8.

[14] Демократизация : учебн. пособ. / сост. и науч. ред. : К. В. Харпфер, П. Бернхаген, Р. Ф. Инглхарт, К. Вельцель ; пер. с англ. под науч. ред. М. Г. Миронюка ; предисл., сост. указателя М. Г. Миронюка ; Нац. исслед. ун-т «Высшая школа экономики». – М. : Изд. дом Высшей школы экономики, 2015. – С. 353.

French Constitution (Art. 4) and others secured the right of citizens to freely unite in political parties.

So, for example, the Italian Constitution in Art. 40 stipulates: *'All citizens have the right to unite in a party in a democratic manner in order to participate in the definition of a national policy'*[15]. And the Constitution of Poland in Art. 11 stipulates the duty of the state to provide *'... the formation and activities of political parties', whose activities stipulate '... on the principles of voluntariness and equality, to unite Polish citizens in order to influence democratic methods in shaping the state policy'*[16].

In 1967, the FRG adopted the world's first special law on political parties. Currently, the Law on Political Parties in the wording of 2002 acts in this state[17].

Instead, in Ukraine, which for a long time was part of the former USSR, there was a rather specific constitutional regulation of the activities of political parties, which was conditioned by a one-party system. So, in the Constitution of the USSR in 1978, there was a notorious Article 6:

'*The Communist Party of the Soviet Union is the governing and steering force of Soviet society, the nucleus of its political system, state and public organizations. The CPSU exists for the people and serves the people*'[18].

The CPSU monopoly on political activity had detrimental consequences for the development of the political, socio-economic and humanitarian system of Ukraine within the former USSR.

After the proclamation of the Declaration on State Sovereignty of Ukraine in our country, the processes of party building were started. Thus, already on November 5, 1990, the Ministry of Justice registered the first political party in an independent Ukraine as the Ukrainian Republican Party, one of whose leaders was the legendary dissident, the Hero of Ukraine L. Lukianenko. In 1991, the Party of the Greens of Ukraine, the Ukrainian Democratic Party, the Democratic Party of Ukraine, the

[15] Конституція Італійської Республіки (з перед. В. Шаповала) / В. Шаповал. – К. : Москаленко О.М., 2018. – С. 30.

[16] Конституція Польської Республіки (з перед. В. Шаповала) / В. Шаповал. – К. : Москаленко О.М., 2018. – С. 17.

[17] Achtes Gesetz zur Änderung des Parteiengesetzes vom 29. Juni 2002 // Bundesgesetzblatt. – Teil I. – 2002. – № 42. – S. 2268-2276.

[18] Конституції і конституційні акти України. Історія і сучасність. 3-є вид. ; упоряди. І.О. Кресіна, О.В. Батанов ; відп. ред. Ю.С. Шемшученко. – К. : Вид-во «Юридична думка», 2011. – С. 123.

People's Party of Ukraine, the Liberal Party of Ukraine, the Social Democratic Party of Ukraine, the United Social-Democratic Party of Ukraine, the Ukrainian Christian Democratic Party of Ukraine and the Socialist Party of Ukraine. At the same time, the People's Movement of Ukraine (PMU) retained the actual status of mass public movement. And already in 1996, the Constitution of Ukraine in Art. 36 has consolidated the right of citizens to *'... freedom of association in political parties'*[19].

The end of 20th-21st centuries was marked by the emergence of mass political parties in the countries of Central and Eastern Europe, which led to the destruction of the communist regimes (Lithuania, Poland, Ukraine and Czech Republic, *etc.).* But soon their polarity was lost and they disappeared from the political landscape of these states. An example of such an influential political force can be the People's Movement of Ukraine (1988), which in the late half of the 90's of the last century lost its political weight, and after the tragic death in 1999, its leader V. Chornovil lost his party representation in parliament. All other mass political parties of Ukraine (the CPU, the SDPU (u), the For a United Ukraine and the Party of Regions, *etc.),* widely represented in the Verkhovna Rada of Ukraine I-VI convocations, were short-lived. None of these forces were elected into the Parliament of the VIII convocations after the 2014 Dignity Revolution.

Two Ukrainian revolutions of the 21st century have also become an important factor in the development of the party-political system and the mechanism for the implementation and protection of the right of citizens to participate in the activities of political parties, which stimulated the revival of the authority of political parties in society through the strengthening of the parliamentary component in the mechanism of government.[20] Thus, the result of the 2004 Orange Revolution, which the famous Ukrainian thinker and patron B. Havrylyshyn called *'one of the most important, most noble events in the history of Ukraine'*[21], was the introduction of a parliamentary and presidential governance form and the

[19] Конституція України : прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 року // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

[20] Fedorenko W. Problem ochrony praw człowieka w warunkach rewolucji oraz konfliktów wojennych / W. Fedorenko // Ochrona praw człowieka w wymiarze uniwersalnym. Akcjologia –instytucje – nowe wyzwania – praktyka. Red Naukowa J. Jaskernia, K. Sprzyszak. – Toruń: Wydawnictwo Adam Marszałek, 2017. – S. 74-78.

[21] Гаврилишин Б. До ефективних суспільств: Дорога в майбутнє; доповідь Римському Клубові / Б. Гаврилишин ; упорядник В. Рубцов. – Вид. 4-е. К. : Унів. Вид-во ПУЛЬСАРИ, 2013. – С. 237.

introduction of a proportional (party) electoral system in 2006 in the election of people's deputies of Ukraine.

A decade later, the Revolution of Dignity was due to the revival of the parliamentary and presidential republican governance form. However, the maintenance of the majority-proportional system during the election of people's deputies of Ukraine and local elections, even with the increase in the number of political parties from 109 political parties in 2001[22] to more than 350 now, somewhat narrower prospects for the development of the Ukrainian Party Political System. Political discourse on returning to a proportional electoral system in the formation of the parliament remains relevant to this day.

The Party Political System has been suffered serious transformations during the 28 years of independence of Ukraine. Now, as of January 1, 2019, it is represented by 352 parliamentary and extra-parliamentary political parties, including such popular after the regular elections of the President of Ukraine in 2019 as the Servant of the People party (The political party was registered under No. 377 dated March 31, 2016)[23]. At the same time, in 2014-2019, the number of political parties in Ukraine grew by one third.

In all these cases, the organization and activities of political parties, the development of party political systems and the provision of party representation in parliaments were the consequence and result of citizens' realization of their right to unite into political parties. In accordance with Part 1 of Art. 36 of the Basic Law, Ukrainian citizens are united in political parties in order to satisfy their political rights and interests.[24] Thus, it is the citizens themselves who are the main founders of political parties and the political system of Ukraine as a whole.

3. Political Parties: Concepts and Functions

In legal science, various, often diametrically opposed, definitions of the category *'political party'* are widespread. In the Soviet era in the Encyclopaedia of State and Law (1925-1927), V. Adoratskyi characterized the political party as *'...organizations for the struggle for*

[22] Див. : Політичні партії в Україні: інформаційно-довідкове видання / Я. Давидович (голова ред. колегії). – К.: Атіка, 2005. – 440 с.

[23] Політичні партії / Офіційний веб-сайт Міністерства юстиції України. Електронний ресурс. Режим доступу : https://minjust.gov.ua/m/4561 – назва з екрана.

[24] Конституція України : прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 року // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

political power: for gaining power or for its maintenance'[25]. This statement reproduced the so-called *'Class approach'* to understanding the state and society in the former USSR. But monopoly systems of totalitarian states of the 20th century, as already noted earlier, cannot be considered as a positive example of the development of political systems of the present.

At one time, one of the ideologues of liberalism L. von Mises wrote the followings:

'*In a state system only, when all citizens enjoy equal rights, in accordance with liberal ideals, which never and never have been fully achieved, there can be political parties that consist of people who are united by the desire to realize their ideas in the field of law and public administration*'[26].

Similar political and legal views, after the proclamation of Ukraine's independence, were widely disseminated both in Ukrainian constitutional and legal opinion, as well as in the Constitution and laws of Ukraine.

At one time, V. Melashchenko wrote that the political party is as follows: *'... the association of citizens as the supporters of a certain national program of social development, the main purpose of which is participation in the development of state policy, the formation of authorities, local and regional self-government and representation in their composition*'[27].

Another scientist-constitutionalist Yu. Todyka noted that for the political parties in Ukraine, the legislator created the conditions under which they act as active participants in the state-legal relations in the electoral process, in other spheres of political and legal relations[28]. According to N. Bohasheva, a political party should be defined as an association of citizens, whose main purpose is to participate in democratic elections to state authorities by nominating candidates for such elections[29]. Both O. Sovhyria and N. Shuklina wrote that political parties in Ukraine

[25] Адоратский В. Партия / В. Адоратский // Энциклопедия государства и права ; под ред. П. Стучки, в 3-х томах. – Т. 3. – М. : Изд-во Коммунистической Академии, 1925-1927. – С. 238.

[26] Мизес фон Л. Либерализм / Людвиг фон Мизес; пер. с англ. и комментарии А.В. Куряева. – М.; Челябинск: Социум, 2019. – С.169.

[27] Мелащенко В. Ф. Основи конституційного права України : курс лекцій для студ. юрид. вузів і факультетів / В. Ф. Мелащенко. – К. : Вентурі, 1995. – С. 58-59.

[28] Тодыка Ю. Н. Конституционное право Украины : отрасль права, наука, учебная дисциплина : учебн. пособ. – Х. : «Фолио», «Райдер», 1998. – С. 117-118.

[29] Богашева Н.В. Відносини держави і політичних партій в Україні: конституційно-правові аспекти : монограф. / Н.В. Богашева. – К. : Логос, 2012. – С. 57.

'... contribute to the formation and expression of the political will of the citizens, and participate in the elections'[30]. Justices justify other values of this category.

Definition of political parties is also found in international documents. For example, in the Codex of Good Practice for Political Parties adopted by the Venice Commission in 2008, it is stated that a political party is an association whose task is to nominate candidates for elections in order to be represented in political institutions and to exercise political power for any level: national, regional or local, or at all at once[31].

The category *'political party'* is regulated in the current legislation. Thus, Art. 2 of the Law of Ukraine *On Political Parties in Ukraine* stipulates the followings: '*A political party is a voluntary association of citizens who are adherents of a certain national program of social development registered in accordance with the law and whose purpose is to promote the formation and expression of the political will of citizens, participate in elections and other political events*'[32].

The generalization of the above definitions and prescriptions can justify the following definition. A political party (from the Latin *'pars'* means *'part';* plural form: *partes* means *'parties'*) is organized on the principles of voluntariness and equality of the community (association) of citizens, united by a common political ideology and legalized by the state in the established manner, which aims at gaining political power in the state through participation in democratic elections and the realization of its political ideology in the internal and foreign policy of the state.

Their goals and tasks political parties are embodied first of all in functions as the main directions of activity of political parties. So, American scholars believe that political parties are implementing the tasks of the peoples with the government and carry out the following four main functions: (1) nomination of candidates for official elected positions; (2) structuring the voting in the elections; (3) promotion of alternative

[30] Совгиря О.В., Шукліна Н.Г. Конституційне право України. Повний курс: навч. посібн. – К.: Юрінком Інтер, 2018. – С. 158.

[31] Кодекс належної практики щодо політичних партій, ухвалений Венеціанською комісією на 77 пленарній сесії (Венеція, 12-13 грудня 2008 р.) // Вибори та демократія. – 2009. – № 4. – С. 84.

[32] Про політичні партії в Україні : Закон України від 5 квітня 2001 р. // Відомості Верховної Ради України. – 2001. – № 23. – Ст. 118.

programs for the government; and (4) coordination of government officials[33].

Independent study of the functions of political parties was conducted by P. Mayer. The scientist believed that the main function of political parties is *'...the integration and mobilization of citizens in the political space, where there is a political struggle'*[34]. P. Mayer also distinguishes other functions of political parties. This, in particular, includes the following functions: (a) public representation as the expression and association of diverse but close-knit interests in broad political programs of the national level; (b) search of political leaders and selection of candidates for public office (public position); and (c) the formation of parliaments and governments, and so on.

At the same time, P. Mayer concludes that the functions of the parties concerning the representation of the interests of the population are gradually offset, while their *'...procedural functions become more and more important and important. ... Traditional mass parties have completely vanished their age'* [35].

Instead, K. Strom reduces the functions of political parties to the following three aspirations: (a) to win votes of voters; (b) to occupy public positions; and (c) to realize its political course[36]. We should also agree with Yu.H. Barabash that political parties are implementing two closely related tasks in their activities: promoting, shaping and expressing the political will of the citizens and participation in elections[37].

In turn, the functions of political parties are the main directions and types of their influence on society and the state with a view to comprehensively realizing their party political ideology and program at the national level.

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[33] Трудным путем демократии: процесс государственного управления в США / К. Джанда, Д.М. Бери, Д. Голдман, К.В. Хула ; пер. с англ. – М. : «Российск. полит. энциклопедия» (РОССПЭН), 2006. – С. 237.

[34] Майр П. Управляя пустотой: размывание западной демократии / Питер Майр; пер. с англ. Д. Маткиной, А. Новикова, И. Соболевой, В. Степановой. – М.: Изд-во Института Гайдара, 2019. – С. 127.

[35] Майр П. Управляя пустотой: размывание западной демократии / Питер Майр; пер. с англ. Д. Маткиной, А. Новикова, И. Соболевой, В. Степановой. – М.: Изд-во Института Гайдара, 2019. – С. 134-135.

[36] Демократизация : учебн. пособ. / сост. и науч. ред. : К. В. Харпфер, П. Бернхаген, Р. Ф. Инглхарт, К. Вельцель ; пер. с англ. под науч. ред. М. Г. Миронюка ; предисл., сост. указателя М. Г. Миронюка ; Нац. исслед. ун-т «Высшая школа экономики». – М. : Изд. дом Высшей школы экономики, 2015. – С. 352.

[37] Барабаш Ю. Нариси з конституційного права / Ю. Г. Барабаш. – Х. : Право, 2012. – С. 42.

The main functions of political parties in Ukraine, in our opinion, are as follows:

- The formation and implementation of a certain political ideology and program;
- Development and diversification of the national political system;
- Participation in national and local elections in order to ensure the representation of parties in elective bodies and elected positions;
- Formation of legislative and other normative project initiatives that embody the program goals and objectives of the political party;
- Establishment and protection of political rights and freedoms of citizens;
- Substantiation and advocacy of political views alternative to the pro-government;
- Political control over the activities of the ruling parliamentary coalition, as well as the activities of the prime minister and the government;
- Interaction with other political parties and public organizations on political issues;
- Establishment of international cooperation with ideologically related parties of foreign countries;
- Ensuring representation of the party in international representative bodies, in particular in the European Parliament (for the EU member states);
- Hiring (Recruiting) and educating political elites and others[38].

4. Public Funding of the Activities of Political Parties in Ukraine

As we know, by their legal nature, political parties are non-profit organizations (NPO). At the same time, they have the right to own, use and dispose of movable and immovable property, have bank accounts, transport and lease premises, *etc.* Not infrequently, political parties have intellectual property: political programs, books and party symbols, etc. It is obvious that the sources of the respective property of political parties must be impeccable in terms of the requirements of the current legislation.

[38] Федоренко В.Л. Конституційне право України : підручник ; До 20-ої річниці Конституції України та 25-ої річниці незалежності України / В.Л. Федоренко. – К. : Вид-во «Ліра», 2016. – С. 199-200.

Therefore, the main sources of financial, material and logistical assistance to political parties are as follows:

(1) Contributions in support of the statutory activities of a political party carried out by its members, as well as other natural and legal persons;

(2) Financing of statutory activities of political parties from the state budget in accordance with the procedure established by the current legislation, followed by state control over the development and use of these funds for their intended purpose[39].

In the opinion of experts, ideally the financing of statutory activities of political parties should be carried out in such proportions: 45% by the state; 45% by legal entities; and 10% by individuals[40]. Although, the optimal model for financing political party activities depends on many factors: the traditions of financing political parties, the forms of government, the type of party political system, and the political culture of citizens, *etc*.

In the European Union, all countries have this mechanism to prevent political corruption. More and more post-Soviet republics (Georgia, *etc.)* are introducing state funding for political parties. Ukraine did not become an exception to this rule. So, on October 8, 2015, the Verkhovna Rada of Ukraine adopted rather progressive amendments to the Law of Ukraine *On Political Parties in Ukraine* in connection with the introduction of annual financing of statutory activities of political parties from the State Budget of Ukraine (Section IV-1: State Financing of Political Parties)[41].

The said Law became not only a condition for granting Ukraine a *'visa-free regime with EU member states',* but also an important element of the legislative mechanism for financing political parties and exercising state control over their activities. It came into force on January 1, 2016, in the part of submitting parties' reports on property, income, expenses and financial obligations, and from July 8, 2016 and in part of the introduction of annual state financing of statutory activities of political parties,

[39] Про політичні партії в Україні : Закон України від 5 квітня 2001 р. // Відомості Верховної Ради України. – 2001. – № 23. – Ст. 118.

[40] Фінансування політичних партій: український та світовий досвід. Основні тези виступу експерта Центру політико-правових реформ з конституційного права, виборів та парламентаризму Богдана Бондаренка / Лівий берег/ Електронний ресурс. – Режим доступу: https://lb.ua/blog/education_ assembly/355836_finansuvannya_politichnih_partiy.html – назва з екрану.

[41] Про політичні партії в Україні : Закон України від 5 квітня 2001 р. // Відомості Верховної Ради України. – 2001. – № 23. – Ст. 118.

reimbursement of party expenses for election campaigning and the establishment of restrictions on the amount of contributions in support of parties by natural persons and legal entities[42].

Legislation on the financing of political parties in Ukraine imposed restrictions on contributions to statutory activities of political parties. Thus, the Law of Ukraine *On Amending Certain Legislative Acts of Ukraine Concerning the Prevention and Counteraction of Political Corruption* prohibits the implementation of contributions in support of political parties: (1) state authorities and local self-government bodies; (2) state and communal enterprises, institutions and organizations, as well as legal entities in which not less than ten percent of the authorized capital or voting rights are directly or indirectly owned by the state, local governments or non-residents or ultimate beneficiary owners (controllers) of which are persons authorized to perform functions of the state or local self-government, respectively; (3) foreign states, foreign legal entities, foreigners and stateless persons, as well as legal entities, the ultimate beneficiary owners (controllers) of which are foreigners or stateless persons; (4) unregistered public associations, charitable and religious associations (organizations); (5) citizens of Ukraine who have not attained the age of 18, citizens of Ukraine, which have been declared incapacitated by the court, as well as by anonymous persons or under the pseudonym; (6) other political parties; (7) natural and legal persons with whom an agreement for the purchase of works, goods or services for the needs of the state or a territorial community has been concluded, during the term of such agreement and within one year after its termination, unless the total amount received for such agreement during the term of the agreement and within two years after the termination of its operation does not exceed 10 percent of the total income of a natural or legal person for the relevant period; and (8) natural and legal persons who have an outstanding tax debt[43].

In this case, as regards the financing of statutory activities of political parties, only those parties can claim it as follows: *'... At the last regular or extraordinary elections of people's deputies of Ukraine, its electoral list*

[42] Про внесення змін до деяких законодавчих актів України щодо запобігання і протидії політичній корупції : Закон України від 8 жовтня 2015 р. // Відомості Верховної Ради України. – 2015. – № 49-50. – Ст. 449.

[43] Про внесення змін до деяких законодавчих актів України щодо запобігання і протидії політичній корупції : Закон України від 8 жовтня 2015 р. // Відомості Верховної Ради України. – 2015. – № 49-50. – Ст. 449.

of candidates for deputies in multi-mandate constituency has received at least 2% of votes from the total number of votes voters cast for all electoral lists of candidates in deputies of Ukraine in multi-mandate constituency'[44].

The decision to grant or not to provide a political party of state financing is taken by the National Agency of Ukraine for the Prevention of Corruption. Although, item 2 of the Transitional Provisions of the Law of Ukraine *On Amendments to Certain Legislative Acts of Ukraine on Prevention and Combating Political Corruption* contains provisions on financing of those political parties that have overcome the 5% passing barrier in the last parliamentary elections in 2014.

In 2016, the financing of political parties in Ukraine amounted to UAH 391 million, and spread to 6 parliamentary political parties. However, since the Law of Ukraine *On Amendments to Certain Legislative Acts of Ukraine on the Prevention and Combating of Political Corruption* of October 8, 2015, entered into part of the state financing of political parties only dated July 1, 2016, political parties received half of the said amount in the 3rd and the 4th quarter of 2016 only[45].

Instead, already in 2019, the National Agency on Corruption Prevention (NACP) distributed between the parliamentary political forces a sum of UAH 565,680,500.0, together with funds for the preservation of the gender balance: the People's Front political party (UAH 145,453,400.0 thousand); the Block of Petro Poroshenko political party (UAH 143,366,100.0 thousand); the Self-Help Union political party (UAH 72, 090.350 thousand); the Opposition Block political party (UAH 61,959,000.0 ths.); the Radical Party of Oleh Liashko political party (UAH 48,925.70 thousand); and the Batkivshchyna political party (UAH 37,317.900 thousand). For the preservation of the gender balance, the Self-Help Union party will receive additionally UAH 56,568,050.0 thousand[46].

[44] Про внесення змін до деяких законодавчих актів України щодо запобігання і протидії політичній корупції : Закон України від 8 жовтня 2015 р. // Відомості Верховної Ради України. – 2015. – № 49-50. – Ст. 449.

[45] Федоренко В.Л. Державне фінансування діяльності політичних партій як чинник розбудови модерної партійно-політичної системи в Україні / В.Л. Федоренко // Вісник НАДУ при Президентові України. Серія «Державне управління». – 2017. – No. 4. – P. 40-43.

[46] НАЗК розподілило кошти на фінасування політичних партій у 2019 році / Офіційний веб-сайт НАЗК. Електронний ресурс. – Режим доступу: https://nazk.gov.ua/news/nazk-rozpodilylo-koshty-na-finansuvannya-politychnyh-partiy-u-2019-roci – назва з екрану.

In the case of providing state financing for the exercise of statutory activities, a political party is obliged to provide a report on property, income, expenses and financial obligations in accordance with the established term of the current legislation. At the same time, the financial discipline of political parties in Ukraine is subject to control by:

- Accounting Chamber;
- National Agency on Corruption Prevention (NACP).

The powers of the National Agency on Corruption Prevention (NACP) in the area of state control over compliance with statutory restrictions on funding are set out in the Law of Ukraine *On Prevention of Corruption* of October 14, 2014, with corresponding amendments and supplements[47].

The experience of financing political parties in Ukraine remains controversial at present. In particular, representatives of the political parties that took part in the last parliamentary elections and collected from 2% to 5% (the Freedom, all-Ukrainian Union, and the Public Position, *etc*.) complain that Government funding solely parliamentary political Parties creating artificial preferences for the past and hinders development of 350 other political parties[48].

A similar situation is common in the introduction of state funding of political parties as a mechanism to counteract political corruption in most of the states that have decided on this step. According to experts, the success of the relevant reforms in the field of state financing of political parties, on the example of the same Georgia, comes in 8-12 years[49]. However, the assistance of international organizations and projects in the field of the development of democracy and the fight against political corruption gives hope that Ukraine will overcome its path to victory over corruption in the field of building a Democratic Political Party System.

[47] Про запобігання корупції : Закон України від 14 жовтня 2014 року // Відомості Верховної Ради України. – 2014. – № 49. – Ст. 2056.

[48] Федоренко В.Л. Державне фінансування діяльності політичних партій як чинник розбудови модерної партійно-політичної системи в Україні / В.Л. Федоренко // Вісник НАДУ при Президентові України. Серія «Державне управління». – 2017. – № 4. – С. 42-43.

[49] Фінансування політичних партій: український та світовий досвід. Основні тези виступу експерта Центру політико-правових реформ з конституційного права, виборів та парламентаризму Богдана Бондаренка / Лівий берег / Електронний ресурс. – Режим доступу: https://lb.ua/blog/education_assembly/355836_finansuvannya_politichnih_partiy.html – назва з екрану.

CONCLUSIONS

The regular election of the President of Ukraine in April 2019 has shown that the national political and legal system, like the political landscape of the EU and other European states, is rapidly changing. In particular, the fatigue of society from traditional political parties and the voters' affinity to alternative, non-systemic parties became noticeable in Ukraine, as in many other European countries. It is expected that this tendency will affect the results of the parliamentary elections in 2019, which will significantly change the centres of political power of parliament and government.

In addition, the reform of local self-government in Ukraine based on decentralization, held in 2014-2019, the foundation of more than 900 United Territorial Communities (UTC) and the expected continuation of the reform of decentralization at the regional level to create the prerequisites for the establishment and development of regional political parties.

There is also a further political de-ideologization of parties in Ukraine, which are increasingly supplanted from the political life of civil society institutions, in particular social networks and social movements. Unlike political parties, which in the inter-electoral period minimize their representation on the ground, and civil society institutions constantly maintain their social activity.

SUMMARY

The publication deals with the actual problems of the theory and practice of the formation and development of the legal status of political parties in Ukraine and abroad. It is noted that today, particular importance is acquired in national political systems in the countries with parliamentary and parliamentary-presidential form of state government. The genesis of political parties in Ukraine and abroad is studied: from the times of Antiquity and early Middle Ages to the present. The mission of political parties during the global crisis of liberal democracy in the XXI century is analysed.

The category 'political party' is substantiated in its legal sense, and the main functions of the political parties in Ukraine and abroad are determined and systematized. The institute of state financing of political parties in Ukraine from 2016 to 2019 is analysed. A conclusion is made

about the tendencies and prospects for the transformation of political parties in Ukraine.

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MEANS OF LEGAL SOCIALIZATION OF PERSONALITY UNDER THE CONDITIONS OF UKRAINIAN SOCIETY INTEGRATION INTO EUROPEAN SPACE

Shvachka V. Yu.

INTRODUCTION

The dynamics of social transformations typical of Ukrainian society over the last decades is inextricably linked with the dynamics of people's adaptation to diverse changes in the economic, political, social and legal fields.

From the outside, the process of adaptation looks like an attempt of the personality to "put" their life world into a new system of socio-legal coordinates. However, in fact, something opposite takes place. It is possible to consider the person to be adapted when they "put" a new social reality into their personal system of values. That is, the adaptation involves, first of all, the person's interiorization of new socio-legal experience. In this regard, under the influence of transitional period peculiarities experienced by Ukrainian society, the problem of legal socialization of the personality is becoming more and more relevant.

The formation of a new socio-economic, political and legal system of Ukraine is accompanied, first of all, by the elimination of previous mechanisms of legal socialization, and only then by the construction of a new model, which in turn, experiences considerable opposition and takes place very slowly. At present, Ukraine is in a situation where the old system of values has been rejected, and the new one has not been formed in full. Moreover, the legal consciousness of the people in the state, which was formed under the supervision of the command and administrative system of state bodies for 70 years, which resulted in a negative neglectful attitude to law, can not immediately and completely perceive a completely new system of values. Thus, both society as a whole and every person are in the situation of adaptation.

The success of many changes, taking place now in Ukrainian society, depends on the awareness of the subjects of law of their place and role in the life of a person, state and society. Conscious perception and execution by citizens of legal orders are impossible without a deep understanding of

the social role of law, the essence and content of legal norms, the role of legal relations[1].

In our time, for Ukrainian society, there is a natural contradiction between the course on the construction of a law-governed state and civil society on the one hand, and the legal reality – on the other, the peculiarity of which is that the law has not yet become the basis of relations in our society; the state authorities themselves and their officials often ignore the norms of law, the so-called "telephone law" is popular. Conflicting legal acts are often adopted; there is a tendency to take precedence of by-laws over laws, which enhances legal nihilism among the people, becoming an obstacle to the development of a law-governed state.

Even in countries with a stable economy and sustainable state structures as well as a consistent system of involving a person in a legal system in which all socialization institutions and agents complement each other, the goals can not always be achieved. In Ukraine, most institutions of legal socialization, such as family, school, and others, are in a survival situation and do not exercise the relevant necessary influence on the process of forming a personality. The growth of social inequality, power ineffectiveness, obvious corruption of power structures at all levels, declaration of equality before the law, absence of real mechanisms for the protection of human and civil rights and freedoms contribute to the formation of a negative attitude to the law and the despair of human rights protection bodies of state power.

The rule of legal nihilism in the society, neglectful attitude and disbelief in law are evidence of a low level of legal culture and legal consciousness of the people. The construction of a legal and democratic society requires, first of all, a strengthening of the role, importance and prestige of law as a regulator of public relations, as well as the formation of a socially active personality with a high level of legal culture and legal consciousness. That, in turn, should be the goal of legal socialization of the personality at the present stage of development of Ukraine.

In the process of legal socialization, the personality is exposed to both spontaneous non-controlling subjective means as well as objective conditions of life, and socially-controlling purposeful activity of state and public bodies and organizations.

[1] Макаренко Л.О. Формування правової культури особи // Часопис Київського університету права: Український науково-теоретичний часопис. – Київ, 2005/3. – с. 21.

In the transitional period of public relation development, the spontaneous forms of legal socialization are dominant, despite their unpredictability and uncontrollability. Public opinion and the opinion of the group, where the person is the direct participant of which, play a major role in forming their attitude to the law. In order to consolidate their belonging to this or that social institution, regardless of whether it is formal or not, the person perceives the value orientations of the group including them in their system of values. Sometimes group values (including legal ones) may not coincide with norms maintained by society, other social groups and the state; in that case the person faces the choice of system of values to which a priority must be given. The decisive role in this situation is played by the internal conviction of the person and the persuasiveness of the arguments and authority as well as the degree of their trust in institutions and agents who substantiate the reasons of perceiving one or another system of values.

Trust is usually considered as an important indicator of the level of acceptability of the norms and values of society and its institutions by a person. It is social values and norms (including legal, as one of the types of social norms) that are shared by all or at least by the majority of members of society and determine the behavior of the person both in relation to other persons, and to society as a whole.

A feature of modern Ukrainian society is the absence of not only generally accepted social values, but also social goals that are clearly defined and accepted by all its members. At all levels of state and society there is no awareness of where our society actually moves and on what principles this movement is taking place[2].

In this regard, the Ukrainian people have mostly not trusted and do not trust practically all power institutions, as well as those institutions that must provide the protection of their legitimate rights and interests.

It is also necessary to draw attention to the fact that, under the conditions of modern Ukrainian society, mass media, which considerably expand the boundaries of the information space, becomes a powerful means of legal socialization.

With the help of mass media, new patterns of legal behavior are created in the person's mind. Due to its prevalence and accessibility, the media is significantly influenced by the level of person's information

[2] М.Паращевін. Соціальна солідарність а українському суспільстві: тенденції змін// Українське суспільство 1994-200. Моніторинг соціальних змін. За ред. д.е.н. В.Ворони, д.соц.н. М Шульги. – К.: Інститут соціології НАН України, 2004. – с.450

awareness and expertness in the content of legal norms, possible behaviors and legal responsibility.

S. M. Koretsky also speaks about the growth of the proportion of mass media each year, and especially electronic, in the process of formation of the personality. He also warns against the possible threat of a deformed value system establishment through socially uncontrolled mass media[3].

Public opinion, as a component of person's environment, is formed spontaneously and it is not possible to control it directly and immediately. According to well-known legal scholars M. S. Osherov and L. I. Spiridonov, it is controlled only indirectly, by revolutionary changes in public life, through the complex mechanism of mass communication and the complex mechanism of person's education, etc[4].

The environment, as a spontaneous factor, in the process of legal socialization of the personality determines the desired behavior of the person transformed by the relevant state institutions and public organizations into the certain goals and objectives of legal education, as a purposeful factor of legal socialization. At the same time, education also has an appropriate impact on the environment, forming a socially active personality, enabling them to fulfill certain social roles.

Thus, the environment and legal education, as means of legal socialization of the personality are inextricably linked and their goals must coincide or at least not compete with each other.

Under the conditions of modern Ukrainian society, during the period of radical changes in its life, the balance in interaction of the environment and legal education is broken in the process of legal socialization of the personality. At present, all institutions of legal socialization are rather separated from each other, they act as competing establishments, and, moreover, they are under the unequal conditions.

It is the goals and methods of legal education as a goal-oriented controlling factor that require significant adjustments, taking into account relevant public changes. Only successful legal education, as an integral part of the process of legal socialization, can provide the necessary level of legal consciousness and legal culture of the personality and neutralize the impact of the environment that is not always positive. However, legal education will only be successful if its goals are objectively determined

[3] Корецький С.М. Кримінологічна характеристика девіантної поведінки неповнолітніх. / Автореферат дисертації на здобуття наукового ступеню кандидата юридичних наук. – К., 2003. – С. 19.

[4] М.С. Орешов, Л.И. Спиридонов. Общественное мнение и право. Ленинград, 1985. – С. 27.

and reflect the actual state of development of society, trends and laws of its economic, social, political, legal and spiritual development[5].

There are two approaches to interpreting the concept of "legal education". Some authors, V.V. Golovchenko, V.V. Ivanov, R.S. Pritchenko[6], in particular, give an extended interpretation of legal education, understanding it as the influence of all conditions of the social environment on the person in conjunction with their individual characteristics, that is, as a system of objective and subjective factors.

V. V. Golovchenko agrees with this point of view, in particular, he considers legal education as a system of formation of legal consciousness, noting that legal education is a pedagogical and socio-legal assistance to a person in the development of their legal culture, understanding the role of law in society, the formation of skills of lawful conduct[7].

Legal education consists of the following main components:

– Formation of a system of legal knowledge among citizens;

– Formation of legal beliefs;

– Formation of motives and habits of lawful conduct[8].

Other authors, in particular, S. M. Legusha, N. M. Parkhomenko, N. M. Onishchenko, O. F. Skokun states that only the process of purposeful influence on the person is referred to the field of legal education, and it is defined as purposeful, organized, consistent and systematic activity on the part of state bodies, institutions, organizations, other participants of the legal process in order to form the proper level of legal consciousness and legal culture, conscious attitude to the requirements of legal acts, law obedience, lawful conduct, aspiration for social and legal activity in a person[9].

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[5] Правовое воспитание молодежи / Н.И.Козюбра, В.В.Оксамытный, П.М.Рабинович и др. Отв. ред. Н.И. Козюбра. – К.: Наукова думка, 1985. – С. 87.

[6] Головченко В.В. Право в житті людини (статті). – К.: Оріяни, 2005.– с. 234.; Теория права и государства. Ученик. – Х.: ООО «Одиссей». – 2006. – С. 396.

[7] Головченко В.В. Право в житті людини (статті). – К.: Оріяни, 2005. – С. 234.;

[8] Головченко В.В. Эффективность правового воспитания: понятие, критерии, методика измерения. – К.: Наукова думка, 1985; Головченко В.В. Правова культура і демократизація. – К., 1990.

[9] Легуша С.М. сутність, функції і механізм правового виховання курсантів вищих навчальних закладів МВС України. Автореф. дисертації на здобуття наукового ступеня кандидата юридичних наук. – К., 2002.

Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В.Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. -с. 419;

Оніщенко Н.М., Матвієнко О.В., Береза С.В., Томашевська М.О. Європейський правовий вимір гендерно чутливої політики / НАН України; Інститут держави і права ім. В.М.Корецького; Центр правових досліджень гендерної політики. – К. : Юридична думка, 2005. – С. 55.

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Thus, according to V.P. Zenin, legal education is, first of all, an activity that has a directed influence on the legal consciousness and behavior of citizens[10].

Legal scholars V. P. Kazimirchuk and V. M. Kudryavtsev, consider legal education in the narrow sense, defining it as a purposeful organized activity of society and its social institutions for the formation of political and legal knowledge, ideas and attitudes on socially active behavior in the personality[11].

According to the author, in the extended interpretation of legal education, it is not so much about education as the process of formation of the personality as a whole. We are particularly interested in legal education as an integral part of the legal socialization of the personality, consisting in the purposeful influence on the personality by state bodies and public organizations, in the interests of the whole society and the persons themselves.

In order to achieve the desired results of legal education, first of all, it is necessary to study and define the purpose, tasks, and also effective ways and methods of its realization correctly.

The purpose of legal education is an ideally formulated result that reflects the expectations of society, defines the main directions of the legal-educational work. Legal education is aimed at forming a respectful attitude not only to the law but also to other values of society[12]. This, in turn, explains the close connection of legal education and other types of education, such as moral, aesthetic, political, etc.

According to the well-known theorist of law, O.F. Skakun, the main goal of legal education is to give a person the legal knowledge necessary in life and to teach them to respect laws and by-laws and adhere to them, that is, to form a sufficiently high level of legal culture that can significantly reduce the number of offences[13].

Well-known scientists V. M. Kudryavtseva and V.P. Kazimirchuk, believe that the main purpose of legal education is to form a system of knowledge, beliefs, motives and habits of socially active behavior[14].

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[10] Правовое воспитание молодежи / Н.И. Козюбра, В.В. Оксамытный, П.М. Рабинович и др. Отв. ред. Н.И. Козюбра. – К.: Наукова думка, 1985. – С. 86.;

[11] Кудрявцев В.Н., Казимирчук В.П. Современня социология права. М., 1995. – С. 117.

[12] Оніщенко Н.М., Матвієнко О.В., Береза С.В., Томашевська М.О. Європейський правовий вимір гендерно чутливої політики / НАН України; Інститут держави і права ім. В.М. Корецького; Центр правових досліджень гендерної політики. – К. : Юридична думка, 2005. – С. 58.

[13] Скакун О.Ф. Теорія держави і права. – К.: Алерта, 2013. – с. 480.

[14] Кудрявцев В.Н., Казимирчук В.П. Современня социология права. М., 1995. – С. 119.

The three-level hierarchy of the legal education goal, which consists in the formation of a complex of specific qualities of the personality in the legal area of life: the formation of a system of legal knowledge (the immediate goal); formation of legal conviction (intermediate goal); the formation of motives and habits, lawful, socially active behavior (the final goal), are distinguished by domestic scientists V.V. Golovchenko and N.M. Parkhomenko[15].

Considering the legal education as a purposeful means of legal socialization of the personality, in author's view, it was reasonable to determine its main goal as the formation of a socially active personality with a high level of legal culture and legal consciousness.

Determination of the goal of legal education makes it possible to specify its tasks, in which N. M. Onishchenko includes:

– Formation and development of citizens' legal knowledge in the field of state administration;

– Education of respect for the law as a social value, to the principles of legality;

– Producing the needs and skills of active protection of the rights and obligations under the procedure established by law[16].

The main tasks of legal education of people of our country include: raising the level of legal knowledge, formation and development of a high level of legal consciousness and legal culture, the formation of such qualities in a person as respect for law, conviction in its necessity and benefit, a sense of legal duty, intolerance to offences, readiness, ability, habit and the need to act in a lawful and active manner in any situation, take part in the application of law and its improvement as well as in the protection of law and order[17].

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[15] Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В. Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 419;

Головченко В.В. Эффективность правового воспитания: понятие, критерии, методика измерения. – К.: Наукова думка, 1985. – С. 26.

[16] Вступ до теорії правових систем / НАН України; Інститут держави і права ім. В.М. Корецького / Олег Володимирович Зайчук (заг.ред.), Наталія Миколаївна Оніщенко (заг.ред.). – К. : Юридична думка, 2006. – С. 176;

Оніщенко Н.М., Матвієнко О.В., Береза С.В., Томашевська М.О. Європейський правовий вимір гендерно чутливої політики / НАН України; Інститут держави і права ім. В.М. Корецького; Центр правових досліджень гендерної політики. – К. : Юридична думка, 2005. – С. 63.

[17] Правовое воспитание молодежи / Н.И. Козюбра, В.В. Оксамытный, П.М. Рабинович и др. Отв. ред. Н.И. Козюбра. – К.: Наукова думка, 1985. – С. 88-89.

The tasks of legal education can be general for the whole people and specific for certain groups, associations and certain persons. In determining both general and specific tasks of legal education, it is necessary to take into account the demographic, professional and psychological features of the objects of legal education, their social and legal status, value orientations, the level of legal consciousness and legal culture. Clearly formed tasks contribute to the correct definition of the main directions, methods and content of legal-educational activity.

In order to obtain positive results of the legal socialization process, the definition of the main tasks of legal education in relation to a particular person should be done through the specification of its general tasks, taking into account individual characteristics of the person.

For the effectiveness of legal education of a person it is important to determine not only its purpose and tasks correctly, but also the forms and methods. After all, achievement of the set goals and expected results is impossible without the definition of proper means, forms and methods of legal education.

N. M. Parkhomenko defines the means of legal education as an organized methodological system that combines subjects, technical capabilities, as well as various ways of transferring the content of legal norms, information, that is, everything that is used to realize and achieve the legal-educational goal[18].

E.V. Burlay includes radio, television, cinemas, clubs, publishing houses, newspapers, magazines, books, posters, stands, visual aids and other materials through which legal-educational work is carried out, as well as means of spiritual influence to the means of legal-educational work[19].

The same means of legal-educational activity are distinguished by V.V. Ivanov and R.S. Pritchenko, who noted that history is a witness of the fact that in all states (with varying degrees of awareness and quality) specific activity is carried out to spread views and considerations about law and order, for which existing means are used: church, literature, art,

[18] Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В. Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 426;

[19] Правовое воспитание молодежи / Н.И. Козюбра, В.В. Оксамытный, П.М. Рабинович и др. Отв. ред. Н.И. Козюбра. – К.: Наукова думка, 1985. – С. 97.

school (of all levels), press, radio, television, special law educational institutions[20].

Having considered the definition of the very concept of "means of legal education" and their main types, which are given in the legal literature, in the author's opinion, it is reasonable to clarify this concept.

Thus, according to the author, legal education is an integral part of the process of legal socialization, namely, the purposeful means of influencing the formation of the personality.

Realization of the set tasks and achievement of the goal of legal education of a person is possible only through the use of its various methods, that is, ways and methods of legal-educational influence.

According to the author, it is reasonable to use the term of ways of legal education, defining them as a system of institutions, agents and methods of purposeful influence in order to fulfill the tasks of legal-educational activity.

There is no single approach to the definition of ways of legal education as well. The majority of national scholars, S. M. Legusha, A. Oliynyk, N. M. Onischenko, N. M. Parkhomenko, O. F. Skakun[21], in particular, include in the main ways of legal education the following: legal education (education, universal education), that is, a single national system of studying law; legal propaganda, that is, clarification of legal policy and distribution of legal knowledge, ideas, etc.; legal practice of state bodies and other organizations, as a set of experience of law-making and law-enforcement activity, realization of the right; legal self-education, namely, the individual work of the personality on increasing their level of legal consciousness.

A.Oliynyk, in addition to the ways of legal education mentioned, distinguish two more types of legal education, namely: legal campaign, which consists in legal influence on the legal consciousness and mood of society members through collective and individual interviews, speeches at meetings, meetings with the help of the press, television, etc. ., as well as

[20] Теория права и государства. Ученик. – Х.: ООО «Одиссей». – 2006 – С. 397.

[21] Оніщенко Н.М., Матвієнко О.В., Береза С.В., Томашевська М.О. Європейський правовий вимір гендерно чутливої політики / НАН України; Інститут держави і права ім. В.М.Корецького; Центр правових досліджень гендерної політики. – К. : Юридична думка, 2005. – С. 58;

Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В. Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 427;

Скакун О.Ф. Теорія держави і права. – К.: Алерта, 2013. – С. 482;

the history of Ukrainian and world culture on legal topics, as a system of literary, artistic, cinema-television and other creative work on legal reality.

The largest list of ways of legal education is given in the works by S. M. Legusha and N. M. Parkhomenko including, in addition to the aforementioned, the legal education, the individual educational work, legal self-education as an individual activity in the study of law.

According to the author, the ways of legal education as a purposeful means of legal socialization of the individual should include:

– Legal propaganda, which is a part of legal agitation;
– Legal education of people;
– Individual educational work;
– Legal practice of state bodies and other organizations;
– Legal social and active behavior;
– Self-education, including self-learning.

All ways of legal education is introduced into life through the system of its institutions and agents.

When choosing the ways and institutions of legal education it is necessary to take into account the objective conditions of development of public relations, as well as the subjective features of the personality or group of persons who are the objects of legal-educational influence. It should also be noted that only systematic, consistent and comprehensive legal-educational influence on the level of state and public institutions, which is based on scientific achievements, will allow achieving their objectives.

Legal-educational activity, as a purposeful means of legal socialization of the personality, should, first of all, begin with their legal awareness. It is difficult to adhere to a legal norm that is not known to a person, and moreover, to include it in an individual system of values. This is possible only if the content of the legal norm is closely linked to the rules of public life, with the norms of culture and morality[22].

The level of legal information awareness of people depends on the state of distribution and availability of legal information. This is ensured through legal propaganda to people through printed materials, mass media, telecommunication technologies, including the Internet, communication with legally educated people and various TV programs, etc.

[22] Методика правової освіти: Навчально-методичний посібник. – К.: Атака – Н, 2005. – С. 23.

The choice of institutes of legal propaganda should be carried out depending on its level of popularity and trust among the people.

As noted earlier, the level of trust in the media in Ukraine is quite high and stable, taking an average position among other institutes of legal socialization of the personality.

In present time, one should not forget about such a relatively new institution of legal socialization as the Internet. Another fifteen – twenty years ago, the Internet, as an institution of socialization (including legal), was not discussed at all. However, today, without computers and the global Internet network, it's not possible to imagine the modern world.

The number of computer technology users is increasing steadily in Ukraine. In Ukraine the same situation is in relation to the inclusion of a person in the information space and involvement in the Internet network.

At present, Web pages have covered a wide space of human existence and they can be and must be considered as an integral part of the information space, which, in turn, allows us to consider the Internet as an institution of legal socialization of a personality having its own advantages. Such advantages include, first of all, the availability of legal information distributed in the Internet to all, without exception, layers of people, regardless of age, social status and educational level.

The advantages of the Internet as an institution of legal socialization may include both efficiency of providing information, and the possibility of feedback, as well as its popularization among people.

Moreover, if we take the mechanism of influence on the person of other institutions and agents of legal socialization, then it begins, first of all, on the initiative of the agent, and as for the interaction of the global Internet network and the person; then in this case, the activity is manifested from the person's side. However, one should not forget that the legal information contained on the Web pages can have a positive or negative impact on the formation of the personality. In this regard, it is necessary to pay significant attention to the quality and content of the diverse information, posted on the Web pages. This is another reason for the recognition of the global Internet network as the institution of legal socialization, with a view to using it to increase the level of legal culture and legal consciousness of people.

Thus, through a number of social institutions and agents, the state using legal propaganda ensures legal information distribution among the people of Ukraine.

Each person's knowledge of the whole set of rights and freedoms that they can use and the duties that they must perform is an important prerequisite for legitimate behavior and development of social activity and the progress of Ukraine on the way to a law-governed state[23].

The legal knowledge acquired should transfer into value sets, become internal convictions, get an emotional coloring, and be consolidated into legal habits. Developing a habit to comply with legal norms, to lawful conduct is the main and most difficult task of legal universal education[24].

Universal education is the unified national system for studying legislation covering all layers of the population and all civil servants. Legal universal education and legal education are identical concepts in their essence[25].

The purpose of legal education as a way of realizing legal education is to form the theoretical basis of legal consciousness and legal culture, to provide the necessary level of systematization of knowledge about the law, development of legal interests, feelings, legal thinking, and formation of scientific legal worldview[26].

The peculiarity of legal education lies in the fact that external requirements, expressed in legal norms, at first, become personal internal conviction of a person, and only then, with their help, transform into real lawful and socially active behavior.

Legal knowledge gained by the person in the process of their legal education helps them to form their value-legal orientations, which directly influence the creation of their own position in relation to different legal phenomena and determine person's behavior.

The task of legal education is to achieve such a level of legal awareness in its implementation, when each member of society would

[23] Заєць А.П. правова держава в Україні: концепція і механізми реалізації: Автореф. дис. … д-ра юрид. наук. – К., 1999. – С. 15.

[24] Методика правової освіти: Навчально-методичний посібник. – К.: Атака – Н, 2005. – С. 24.

[25] Скакун О.Ф. Теорія держави і права.– К.: Алерта, 2013. – С. 484.

[26] Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В.Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 426.

adhere to social rules of conduct and legal norms solely by virtue of the internal necessity, own convictions, and not under pain of coercion[27].

Specially organized legal influence is either rejected by individual legal consciousness, or perceived by it and used by the personality in the process of self-improvement. General requirements of legal education acquire an individual value, depending on the nature of legal attitudes and beliefs of a particular person. That is why, according to V.V. Golovchenko, legal education is an active two-way process in which not only the educator influences the person who is being educated, but also the person is an active subject, who strives for socialization and self-affirmation. Therefore, legal education is impossible without self-education, and vice versa, proper self-education is impossible outside the system of legal education in society, since legal education consists of activities of both the subject and the object of the process[28].

It is the quality of legal education that influences the level of legal culture and legal consciousness of the personality, the transition of normative requirements into person's internal beliefs.

The transition of legal norms and the system of legal values to the internal structure of the person is impossible without their own efforts. In order for the external law-socializing influence to be mastered in a certain way, first of all, there must be the person's desire to take on the legal values cultivated by society. Therefore, without triggering the person's desire for self-education, it is impossible to achieve an effective legal education in general.

Thus, self-education plays a very important role in the process of legal socialization, and, consequently, in the legal education of the personality.

The ultimate goal is, according to V.V. Golovchenko, in the transition of external normative-legal requirements to the internal needs and attitudes of the personality, socio-legal values – in the individual value-legal orientations, guided by which a person determines the nature of their behavior, provides stability of life attitude[29].

[27] Оніщенко Н.М., Матвієнко О.В., Береза С.В., Томашевська М.О. Європейський правовий вимір гендерно чутливої політики / НАН України; Інститут держави і права ім. В.М. Корецького. – С. 57.

[28] Перестройка и правовое воспитание советских граждан / Н.И. Козюбра, В.В. Оксамытный, Е.В. Бурлай и др. ; Отв. ред. Н.И. Козюбра. – Киев: Наук. думка, 1989. – С. 75-76.

[29] Перестройка и правовое воспитание советских граждан / Н.И. Козюбра, В.В. Оксамытный, Е.В. Бурлай и др. ; Отв. ред. Н.И. Козюбра. – Киев: Наук. думка, 1989. – 73 с.

In the theory of education, it is recognized that self-education is the result of well-organized education.

Legal self-education begins on the basis of the achieved level of personality development as a result of general and legal education. The process of conscious self-education comes much later than education. In the opinion of D. E. Tikhomirov, the education of a person begins from the moment of their birth, and the effective process of legal self-education – usually from 15-16 years[30].

It is the conscious internal activity of the person aimed at changing their personality, forming the desired qualities in themselves, that has been called self-education. G. E. Glezerman defines self-education as the work of a person over the formation of own personality[31].

A. Oliynyk considers the process of legal self-education as a purposeful, daily, systematic activity of a person on the acquisition of legal knowledge, the formation of positive legal motives and guidelines, skills of lawful conduct, consisting in independent efforts aimed at developing a habit of active lawful behavior.

Self-education covers all areas of mental, moral and physical development of personality: their abilities and knowledge, moral and physical qualities, tastes and personal features[32].

Legal self-education involves a deep independent study, assimilation, development, consolidation of certain principles of law and morality, values, social norms of behavior in order to resist any negative external influence. It is based on the conscious transformation of the personality, the development of positive and overcoming their previous antisocial qualities, their own disadvantages, based on self-coercion, self-control. At the same time, the main thing is self-education of socially important legal orientations, the guidelines for lawful behavior.

Self-education forms respect for the law, the need for strict compliance with legal norms through self-study, self-analysis of legal reality and personal practice in the individual[33].

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[30] Тихомиров Д.Е. Правовое самовоспитание молодежи. – К.: Издательство об-ва «Знание» Украины, 1991. – С. 20.

[31] Глезерман Г.Е. Рождение нового человека. М., 1982. – С. 74.

[32] Глезерман Г.Е. Рождение нового человека. М., 1982. – С. 74; Донцов И.А. Самовоспитание личности – М., 1984 – С. 6.

[33] Оніщенко Н.М., Матвієнко О.В., Береза С.В., Томашевська М.О. Європейський правовий вимір гендерно чутливої політики / НАН України; Інститут держави і права ім. В.М.Корецького; Центр правових досліджень гендерної політики. – К. : Юридична думка, 2005. – С. 59.

The reference point of the process of legal self-education is the motive, that is, the deep conscious internal belief of the personalities in the need for systematic purposeful work on themselves. This makes it possible to distinguish two main stages of organization of the legal self-education process of the personality: preparatory stage and direct self-education.

The purpose of the preparatory process is to formulate a set of legal knowledge, since it is precisely information about law enforcement practice, a judicial and administrative chronicle, clarification of specific legal norms that promotes self-examination of the personality, determination of their attitude to society and the processes occurring in it, to the socio-legal reality.

Knowledge of the law basics and awareness of its value is the main element of the legal self-education of the personality. Legal self-education, as a form of legal enrichment of the personality, helping to assimilate and rethink legal information, socio-legal experience, social and legal norms and criteria of conduct is the source of reinforcement and updating of legal knowledge. Legal education is part of the preparatory stage and, in a way, catalyzes the beginning of the legal self-education process.

The second stage is the legal self-education of the personality, that is, person's immediate process, which has its stages of implementation.

Thus, V.V. Golovchenko defines the following stages of self-education: self-cognition, self-knowledge and self-assessment of the level of legal knowledge, the development of a program of legal self-education and self-education, independent work on eliminating gaps in legal consciousness, studying the necessary legal acts[34].

Thus, a person having obtained a certain level of legal knowledge as a result of legal self-education at the preparatory stage of the organization of the self-education process begins its direct implementation through self-analysis and self-assessment of the drawbacks of their own behavior, which does not meet the established norms of law.

After understanding the necessity of legal self-education, the personality forms the purpose of legal self-education and particular tasks for their achievement in own consciousness. After that, the process of

[34] Головченко В.В. Право в житті людини (статті). – К.: Оріяни, 2005. – С. 311– 312.

self-improvement as well as gradual introduction of the norms of law, mastered by consciousness, into the practice of daily behavior begins.

Only the knowledge and legal norms are fixed in our consciousness and turn into habits and norms of behavior that are systematically used in practice in everyday life[35].

Taking into account that legal self-education is a purposeful work on oneself with the aim of improving the legal consciousness, enhancement of legal culture, it is also necessary to identify a set of ways of self-education that can be used for legal-educational purposes.

The system of methods for organizing the process of legal self-education is the same methods used in the process of self-education, in particular: self-conviction, self-directing, self-discipline[36]. These methods of legal self-education are at the same time the subjective regulators of personal behavior. The leading place in the system of these methods also includes self-control, self-coercion and lawful behavior of the personality in everyday life.

Legal self-education of a personality and external legal socializing factors should not be considered as an ordinary combination of independent processes. These are interrelated aspects of a single process of legal socialization, aiming at formation of a personality with an active legal attitude.

CONCLUSIONS

The dynamics of social transformations under the conditions of integration of Ukrainian society into European space is inextricably linked with the dynamics of people's adaptation to various changes in the economic, political, social and legal domains.

The formation of a new socio-economic, political and legal system of Ukraine is accompanied, first of all, by the elimination of previous mechanisms of legal socialization, and only then by the construction of a new model, which in turn, experiences considerable opposition and takes place very slowly.

In the process of legal socialization, the personality is exposed to both spontaneous non-controlling subjective means as well as objective

[35] Тихомиров Д.Е. Правовое самовоспитание молодежи. – К.: Издательство об-ва «Знание» Украины, 1991. – с. 27.

[36] Тихомиров Д.Е. Правовое самовоспитание молодежи. – К.: Издательство об-ва «Знание» Украины, 1991. – с. 28.

conditions of life, in particular, direct environment, and socially-controlling purposeful activity of state and public bodies and organizations, that manifests in a well-organized system of legal education.

Both environment and legal education as a means of legal socialization of a personality, are closely interconnected with each other and their goals must coincide or at least not to compete with each other.

In the transitional period of public relation development, including in Ukrainian society, the spontaneous forms of legal socialization are dominant. It is only possible to neutralize not always positive influence of the environment through systematic, consistent and successful legal education, the main goal of which should be the formation of a socially active personality with a high level of legal culture and legal consciousness.

However, the legal education will be successful only in case when its goals are objectively defined and reflect the real state of society, trends and laws of its economic, social, political, legal and spiritual development.

SUMMARY

The article deals with the studying of means of legal socialization under the conditions of Ukrainian society integration in European space. The main means, institutions and agents of legal-socializing influence on the person, including under the modern conditions of Ukrainian society development are determined.

It is defined that in the process of socialization the personality is exposed to both spontaneous non-controlling subjective means as well as objective conditions of life, in particular, direct environment, and socially-controlling purposeful activity of state and public bodies and organizations, that manifests in a well-organized system of legal education.

Both environment and legal education as a means of legal socialization of a personality, are closely interconnected with each other and their goals must coincide or at least not to compete with each other.

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CONCLUSIONS

Both a person and law are social phenomena correlating between each other as well as they are the features of state-creation. The human attitude to law, along with a legal system is based on beliefs, values, ideals and education. This is a guarantee of efficient existence of a legal system giving an opportunity to protect human interests through universal human fundamental values: justice, freedom, dignity, equality, humanity, etc. In Ukraine there are certain “duties” assigned to the law, namely, to protect and exercise human rights and freedoms appearing in relations between a person and a state.

The law-governed state formation begins from a legal culture of a person who is aware of social necessity and legal reasonableness to use legal means. Therefore, the connection between a state and a person, first of all, is based on the state duty to protect human rights and freedoms. The principles of the supremacy of law, democracy, constitutionality, justice, lawfulness, becoming the basis of a law-governed state creation, are of vital importance. The political, economic and legal system reformation is the task for establishment and development of statehood, which must be carried out through the prism of the Constitution norms.

Therefore, legal science, and namely, jurisprudence is one of social sciences and is a certain system of knowledge about the state and the law. The work given is a detailed study of theoretical and practical aspects of a modern jurisprudence development. The scientific priority is emphasized in the work, providing the original scientific information to society and serving for both main content description and results of the scientific research given through studying and generalizing the positive experience of European countries and at present it is the basis for the successful development of effective legal framework in Ukraine.

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