V.I. VERNADSKY TAURIDA NATIONAL UNIVERSITY

FORMATION AND PROSPECTS FOR THE DEVELOPMENT OF NATIONAL CRITICAL INFRASTRUCTURE PROTECTION SYSTEM IN UKRAINE

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The monograph deals with the conditions of the state policy priority areas in the protection of critical infrastructure security aimed at human rights and freedoms protection in Ukraine; comprehensive improvement of a legal basis for critical infrastructure protection and provision of national security in Ukraine.

It is intended for scientists and practitioners, lecturers and students of legal universities and faculties, for a wide range of readers.

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INTRODUCTION

The Government approved and published the Concept for the creation of a state system for the protection of critical infrastructure of Ukraine developed by the Ministry of Economic Development and Trade together with the National Institute for Strategic Studies and the Security Service of Ukraine № 1009-r on December 6, 2017. By virtue of this Concept, the main directions, mechanisms and terms of complex legal regulation for the protection of critical infrastructure and the establishment of a public administration system in the field of its protection are defined. The implementation of the Concept is designed for a ten-year period (from 2017 to 2027) and combines institutional and organizational changes to the existing system of protection of critical infrastructure, as well as legal changes in national legislation.

The monograph “Formation and Prospects for the Development of the National System for the Protection of Critical Infrastructure in Ukraine” consolidates the priority of protecting critical infrastructure in the state, which will provide the society with basic scientific information as for normative-legal regulation of protection for systems and the above-mentioned objects. Scientific study of the main fields of development and the proposed protection systems are aimed at ensuring critical infrastructure sustainability against the threats of all kinds, which is of great importance for the economy and industry, society functioning and population safety.

Maintenance of vital social functions is one of the priority functions of the state. Therefore, it is necessary to determine compulsory tools in the national legislation currently used by European countries to effectively protect critical infrastructure. In view of that, consolidation of effective norms protecting the critical infrastructure objects is required in Ukraine.

The publication provides information related to the establishment and development of the national critical infrastructure protection system in Ukraine, the disclosure of which will help to realize and understand the nature of the above-mentioned issue.

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PRECONDITIONS OF SUBJECTIVE RIGHTS PROTECTION IN NATIONAL ADMINISTRATIVE LEGAL PROCEEDING

Bevzenko V. M.

1. From the History of National Administrative Legal Thought

Complicated political-state and public events having taken place at the beginning of 20th century at the Ukrainian territories, left behind terrible outcomes and changed national system of law for a long time, defining the purpose of legal science and legislation as well as their content in a fundamentally different way as it was accepted in a civilized world.

It should be recognized that a unified European-wide legal space where Ukrainian science, legislation and legal practice were created, stopped it existence after Soviet power regime establishment at the Eastern-European territories. At least for the next 70 years in USSR the party ideology, absolute and total subordination of all society members to the administrative orders of Bolshevik party and the state mechanism established by them were dominant rather than rights and freedoms of a person as well as the supremacy of law. Progressive teachings about legitimacy of law and legal acts, relations between the person and the state, its authorities, were absolutely put aside and undeservedly forgotten. Legal acts and their drafts, prepared at the beginning of Ukrainian statehood formation in the 20th century, were either lost or fundamentally refused by a new power.

As a result, the Ukrainian administrative legal thought was regressive, with a few decades of delay in the development, comparing to the administrative law of Germany, France, the United States of America and many other civilized states of the world with perfect democracy and the law system.

The long-term oblivion experienced by the national legal thought turned out to be too big challenge for it, and the outcomes were so severe that only now scientists are beginning to find invaluable treasures of Ukrainian legal science and legislation, having not only historical, but

also practical value. After all, they can be used to approve new and to improve existing normative acts of modern Ukraine.

However sad and even dangerous it might be, the Soviet distorted perception of administrative law, its purpose and content has continued to expand already in the modern Ukrainian legal community. Quite unsuitable for use, and even more for development, the old traditions of the era of administrative law decline distort the objective perception of administrative-legal categories, their interpretation and application.

In particular, among the administrative-legal problems that administrative courts are now trying to overcome – the definition of the content and criteria of administrative jurisdiction, its differentiation from other court jurisdictions, the grounds and limits of interference of administrative courts in the administrative discretion of public administration subjects, the definition of administrative agreement and their differentiation from the rest of private-contractual instruments of the activity of the public administration subjects, the grounds and justification of the evaluation of administrative acts in the administrative the courts and their correlation with other instruments of public administration, as well as with other documents of a legal nature.

However, more than ever in time, not only the reinterpretation of the fundamental concepts and categories of administrative law but new tasks have arisen in the front of national law science and legislation, objectively resulted from social and state progress. First of all, the need to justify and resolve new public relations has appeared.

So, we can say about continuity and rapid pace of the development of administrative-legal relations, the renewal of principles for the public authorities' activities.

For example, in administrative law contractual and service institutions, the existence of administrative-legal relations between private persons, without participation of public administration has been recognized; the instruments of administrative-legal dispute resolution by mediation are being developed; the development of studying about public property is prospective and urgent.

It should be kept in mind that the European Union law and procedure influence the national administrative law and procedure, the European administrative space at the same time continually is expanding on national administrative law and procedure of Ukraine. Until recently unknown or

forgotten branches of administrative law are rapidly forming and developing: administrative and commercial law, municipal law, police law, public service law, and town planning law, telecommunications law, atomic law, environmental law, and many others.

Having declared the focus of public-state ideology on, in particular, a new understanding of the purpose and content of administrative law, the Ukrainian scientific community of law will have to propose a new model of teaching administrative law, its practical realization and legislative implementation.

In many aspects, the works of scientists who, despite the artificial ideological divisions of people and states, being within a single administrative-legal space, continued to develop the classical science of administrative law, preserving and multiplying its best traditions, could have played the decisive role in the final formation of a new teaching of national administrative law.

Many glorious descendants of the Ukrainian land, even under difficult living conditions and far beyond the borders of the Motherland, continued the persistent scientific research, teaching and public activities in the field of law. Among the prominent legal scholars of Ukrainian origin who devoted themselves to the study of administrative law and procedure essence – the world's best known and unknown in Ukraine – Yuri Lukich Paneyko. His works, the opinions expressed in them, and the provided scientific surveys corresponded to the general ideological orientation of the European countries' administrative law, in particular Germany, Poland, France, in the context of his best achievements. It is easy to be sure in the progressive nature of scientific achievements presented in Yuri Paneyko's works, if comparing them with the modern Common administrative law of Germany.

It is also clear that although in the 20 years of the 20th century, the liberation state competition for independent Ukraine tragically ceased, but scientific and legislative work on the development and implementation of the administrative justice national institution continued. Almost at the same time, with the establishment of Soviet power at the Ukrainian territory, active law-making work continued abroad.

After the Ukrainian state decline in the 20s of the last century, the most important centers of Ukrainian emigration (representatives of the government and the army, politicians and culture) were Prague, Warsaw,

Vienna, Berlin, and Paris. Many Ukrainians from the Naddnipriansh yna were in Poland, Czechoslovakia, Romania, Yugoslavia, Bulgaria, Italy, and Belgium.

The destiny of Ukrainian emigrants was hard, they experienced numerous challenges in their life, and the activity of representatives of socio-political layers manifested in different ways and had different results. The Ukrainian emigration's activity resulted in documents and books that were stored in the State Scientific Archival Library of Kyiv. The draft law "On Courts of Administrative Cases" of the Ukrainian People's Republic of 1932 was among the documents, first discovered in 2004.

The result of the next search was the discovery of the draft of Administrative Code of the Ukrainian People's Republic of 1932 in June 2013 and the draft of Provisional Judicial system of the Ukrainian People's Republic of 1931 prepared by representatives of the Ukrainian Diaspora in the 20-30s of the 20th century. These drafts concern the field of administrative law and the judicial system, published in the form of notebooks (collections), named in accordance with their content "Draft ..." and "Motives to the draft ...".

It is interesting that three documents together – the Draft of Administrative Code of the Ukrainian People's Republic of 1932, the Draft of Provisional Judicial System of the Ukrainian People's Republic of 1931, the Draft Law on Courts in Administrative cases in the UPR of 1932 – form a peculiar, complete "set" of acts combining with each other, exhaustively regulates and protects the relations between a person and public authority.

The Draft of Administrative Code of the Ukrainian People's Republic contained a description of the rules of human behavior and subjects of public administration (settled administrative-legal relations between them).

The Draft of Provisional Judicial system of the UPR established the system and the internal structure of republic courts, which should protect public rights and verify the legality of exercise of the public administration subjects' powers executed in accordance with the Administrative Code. According to the Law on Courts in Administrative Cases, legal proceedings should be exercised concerning a person's claim against a representative of public authority.

The Administrative Code of the UPR of 1932 contained elements of modern administrative law and legislation. As a matter of fact, this Code is one of the first in the world and national legal history procedural act, which describes the relationship between a person and public administration subjects.

The law on courts in administrative cases was nothing else but a perfect at that time, procedural code, which described the sequence and peculiarities of the implementation of administrative legal proceedings. The ideology of this Law, its content, peculiarities of the norm presentation, institutions, and stages are very similar to the content of the Code of Administrative Legal Proceedings of Ukraine in 2005, 2017.

Thus, in the 20-30s of the 20th century, Ukrainian people, in addition to one of the world's first constitutions and the Administrative Code, had a complete Code of Legal Proceedings in administrative cases.

The Provisional Judicial System of the UPR provided that a judicial system was built based on the principles of hierarchy, specialization and territoriality; common courts had to start working (considered civil and criminal cases), social courts ("Courts of Labor").

On can definitely state that these documents describe a complete and self-sufficient mechanism for the implementation and protection of public human rights in relations with the subjects of public administration. We believe that these documents were a successful practical implementation of progressive ideas and provisions of the science of administrative (police) law and administrative procedure of that time. Unfortunately, some provisions of these progressive documents was not only implemented, but were absolutely refused in Soviet Ukraine and undeservedly forgotten.

Using these documents as the examples made by the UPR representatives, we can observe a natural, logical and so necessary combination of three branches of legal activity for the society and the state, namely, research, law-making and law enforcement.

After all, unlike democratic Ukraine, the full implementation and realization of legal activity in the Soviet Ukraine, in particular, in the field of administrative law and procedure did not take place ... On the pages of documents, an ideological purpose is revealed, showing the intentions of the UPR representatives in exile: "With the end of Russian occupation the issue of implementation of the legal system in the state and public life will

arise in front of Ukraine. One should hope that the Ukrainian law-making idea in this regard will follow the example of the West and will be preceded by the need for the organization of administrative justice as the only true guarantee of this system".

Analyzing these historical memorial documents, the question naturally arises whether it is ready and if so, then to what extent a modern Ukrainian legal and scientific thought is ready to not only perceive the best experience of subjects of public administration activity, administrative justice, but also to implement and develop progressive achievements of European administrative-legal and administrative-procedural science and practice.

National history should not only be known and respected, but its achievements must also be used purposefully and consistently. Many answers to questions about administrative jurisdiction, the scope of administrative law, and other disputed topics discussed by the legal community, in fact, were comprehensively substantiated in the 19th and 20th centuries.

2. Why is it impossible to appeal to administrative court only because you do not like the authorities' decision?

Administrative justice is an effective instrument for protecting rights violated by public authorities, but it should be properly applied. There are legally provided preconditions where administrative proceedings are being conducted in order to protect human rights.

This does not mean that there may be the cases where administrative proceedings will not work in the event of subjective law violation. Administrative courts are obliged to protect a person, to renew their rights, but unfortunately, plaintiffs are often unaware of the preconditions for appealing to court and do not always understand where there is actually a violation and where there is no. But they look forward to judicial protection, which is impossible, because the underlying preconditions for appeal to an administrative court or satisfaction of claims have not been taken into account. Then the courts must refuse to open the proceedings.

Part 1, Article 2 of the Code of Administrative Legal Proceedings of Ukraine contains preconditions for appeal to the administrative court.

What must exactly be considered? First of all, **there must be public-legal relations**, namely, objectively existing public relations, regulated by the norms of law between the plaintiff and the defendant.

It is not about any legal relations, but only about public-legal (administrative-legal) relations. It is impossible to appeal to an administrative court without them. It is in this fact where the idea of subjective judicial control manifests itself, that is, the court controls what has actually happened.

One of the mandatory preconditions is the existence of a violated right.

For example, a man disputes a council decision, believing that an allocated land plot is insufficient, while the local council has allocated this plot to his wife. The administrative court will refuse the man in satisfaction of his claim, as he was wrong, believing that he has certain rights to this plot.

The list of preconditions for appeal to the administrative court should include **the subjects of power authorities**. If there are relations, but there is no subject of power authorities, then there is more likely to be no administrative-legal relations. If such legal relations do not have a representative of public authority, administrative courts will not carry out a protective function.

One can often observe when a subject of power authorities exercises not public-powerful, but private powers. For example, we have a law on public procurement. Public procurement is made up of two consecutive legal relations. Number one is competitive relations when the winner is announced and determined. This is, of course, an administrative law, and such legal relations are a common and permanent object of judicial control of administrative courts. The second type of legal relations in public procurement begins from the moment when the winner is determined and an agreement on the provision of services or the purchase of goods is made. These are private-legal relations, which are the subject to court examination in accordance with the rules of the Civil Procedural Code of Ukraine or the Commercial Procedural Code of Ukraine.

A lot of discussions arise about the nature of the Public Council of Good Faith. When people say that this is the subject of power authorities, they refer to clause 9, part 1, Art. 19 of the Code of Administrative Legal Proceedings of Ukraine, according to which disputes concerning the appeal

of decisions of attestation, competition, medical and social expert commissions and other similar bodies are administrative jurisdiction. The Public Council of Good Faith is referred precisely to “other similar bodies”. But the phrase “council of good faith” is preceded by such an adjective as “public”. It is immediately apparent that this council belongs to the publicity. Is the publicity a public authority or not? Is this power at all?

However, this is a completely different topic, and at present we are talking about the preconditions for appeals to administrative courts. These preconditions must be taken into account and you will definitely obtain a worthy legal protection.

3. Public Authority as a Criterion of Administrative Jurisdiction

There are many manifestations of public authority and they are different, so for a successful appeal to the administrative court with a claim, it is necessary to correctly determine whether there has been a violation of subjective law by a representative of public authority exactly.

The task of administrative courts is to verify the legality and reasonability of any manifestations of public authority having an administrative-legal nature. As a general rule, the jurisdiction of administrative courts does not apply to legal disputes in which there are no subjects of public authority. Almost the only exception to the rule of judicial control of administrative courts under the subjects of authority is administrative and legal relations without the subjects of power authorities, with the participation of only physical persons or legal entities.

First of all, we have to find out what public authority is? It is characterized by the ability to influence the behavior of people by making the appropriate decision, performing activities or reaching the predicted state of public relations. Volitional decision of the representative of public authority extends to people, manifesting in the possession of the material world objects. For example, an order for dismissal from the public service, an administrative act on the disposal of minerals, land plots, monetary assets, property complexes, objects of public property, etc.

Public authority

Public authority is recognized by society, citizens of Ukraine, or a significant part of this population. The publicity of authorities is ensured by binding resolutions, the legal force of which extends to participants in

public relations. If these resolutions are not carried out voluntarily, then state coercion (criminal, criminal procedure, administrative coercion) is applied to those to whom such will is directed. Therefore, a subject that avoids proper execution of the decision will be forced to execute it, since public authorities are empowered to use state coercion. In particular, the Code of Administrative Legal Proceedings of Ukraine has regulated measures of procedural coercion (Articles 144-149).

The next feature of public authority is that the subjects of public authority are provided with the necessary resources such as financial, material resources, and personnel. Moreover, people hired by public authority at the positions, undergo vocational training and retraining.

We have to include an official nature in the features of public authority. Thus, the Parliament, the Government, the judicial power are recognized by the Constitution, provided by laws, act on the basis of laws, have special external features. For example, the symbols of the judicial power such as the mantle, and the badge are stated in the Law of Ukraine "On the Judicial System and the Status of Judges".

The next feature of public authority is its relative autonomy. The subjects of public authority are separated from each other organizationally.

Therefore, the conclusion whether we deal with a subject of power authority, or with any other subject-holder of private authority, can only be done when we thoroughly analyze the features of public authority. If there is no compulsory, the most approximate set of features of public authority, and only one of the above features is available, one can be misled in determining the nature of one or another participant in disputed legal relations, defining the subject as the implementer of public authority by mistake, and indicating that the public legal relations are present.

In the Code of Administrative Legal Proceedings of Ukraine, representatives of public authority are defined as subjects of power authorities (clause 7, part 1, Art. 4). Taking into account that the concept of "a subject of power authorities" provided by the Code of Administrative Legal Proceedings of Ukraine is not sufficiently perfect and evaluative in its essence, it is sometimes unreasonable to identify this subject with the participants of public relations who are not holders of public authorities. On the contrary, we must clearly understand who such

subject is, by what power is characterized, when the power is public and in which particular subjects this public authority is personified.

There are several types of subjects of power authorities – representatives of public authority. Such authorities are, in particular, state authorities, state bodies (the Security Service of Ukraine, the Central Election Commission, the High Qualifications Commission of Judges of Ukraine, the national commissions in the market of natural monopolies, etc.), the authorities of the Autonomous Republic of Crimea, local self-government bodies (Articles 6, 19, 75, 113, 118, 124, 125 of the Constitution of Ukraine, clause 7, part 1, Art. 4 of the Code of Administrative Legal Proceedings of Ukraine), etc.

A special representative of public power is the National Bank of Ukraine, which, although not in the system of state authorities, state bodies, but in accordance with the Law "On the National Bank of Ukraine" is the central bank of Ukraine, a special central state authority (Article 2). Due to its competence, status and instruments applied to it, the National Bank of Ukraine should be recognized as a public authority, although its main function is to ensure the stability of the monetary unit of Ukraine (Art. 6 of the Law of Ukraine "On the National Bank of Ukraine").

Representatives of public authority are also the Verkhovna Rada of the Autonomous Republic of Crimea, the Council of Ministers of the Autonomous Republic of Crimea, ministries and republican committees, provided by the Constitution of the Autonomous Republic of Crimea.

A representative of public authority is also the local self-government bodies, which are the closest to people, with which a considerable number of administrative disputes appears resolved by administrative courts.

Another specific entity created by the state to carry out its functions is the Deposit Guarantee Fund of Physical Persons. This is the holder of authority, as the state legislatively defined the scope of competence, task and purpose of this Fund, gave it powers to dispose, make decisions at its discretion. Although it is not a state establishment and such Fund is an institution that performs special functions in the field of guaranteeing deposits of individuals and the withdrawal of insolvent banks from the market and liquidation of banks in cases established by this Law (Art. 3, 4 of the Law of Ukraine "On Deposit Guarantee System of individuals"), it is a fully-functional subject of power authorities.

Conducting state control over property, real estate objects, money does not mean that the state acts as a subject of private law in these cases. Such activity of the state, if it is based on the provisions of administrative legislation with an external manifestation of administrative competence, is always administrative. And in this activity public authority is manifested.

Therefore, all subjects of power authorities personify public authority in Ukraine.

At the same time, it is worth drawing attention to three objective circumstances.

First of all, the list of subjects of authority, indicated in Clause 7, Part 1, Art. 4 of the Code of Administrative Legal Proceedings of Ukraine is not complete, since other entities of authority, not provided by this norm, can enter into administrative-legal relations too. For example, such subjects of power authorities include a military unit, a customs, a border detachment, etc. Therefore, it is obvious that the norms of the Code of Administrative Legal Proceedings of Ukraine, other national legislation determine the organizational legal form, legal status of other subjects of power authorities as well. Such subjects, for example, are the National Commission for Rehabilitation (Clause 13, Part 1, Art. 19 of the CAP of Ukraine), the bodies of state border security of the State Border Security Service of Ukraine (Art. 10 of the Law of Ukraine "On the State Border Security Service of Ukraine").

Secondly, the exercise of public authority functions, in addition to the subjects of power authorities, can be delegated to other entities, in particular, representatives of self-governing professions. The state can delegate its public authorities to self-governing structures, authorized subjects, which will partially perform these functions following the instructions of the state. There are many such authorized subjects which representatives are self-governing professions such as notaries, advocates, insolvency officials, representatives of customs brokers, auditors, etc.

As holders of a certain amount of public authorities, it is necessary to distinguish the organizations of these self-governing professions, which ensure their functioning, control the qualification and discipline, in particular, they are the Audit Chamber of Ukraine, the Notary Chamber of Ukraine, the Qualification-Disciplinary Commission of Advocates, etc.

Thirdly, the subjects of power authorities, exercising the powers provided in the norms of the Civil Code of Ukraine (Articles 2, 167-173),

are parties to private-legal relations. It is obvious that such relations do not apply to the jurisdiction of administrative courts. The evaluation of both the nature of the law norms and disputed legal relations allows making the correct conclusion at the end, whether the subject of authority exercised public authority and whether this dispute belongs to jurisdiction of the administrative court.

Thus, public power in Ukraine is represented by a multi-branching system of subjects of authority, which differ in organizational-legal form, scope of authority and purpose of activity. Therefore, it is worth suggesting a classification of subjects of authority for a correct and substantiated conclusion about the subject of authority and its differentiation from entities that do not exercise public authorities.

The first group is the subjects of power authorities with the status of a legal entity. These are already mentioned state power bodies, state bodies, the National Bank of Ukraine, public law funds, the authorities of the Autonomous Republic of Crimea, local self-government bodies, etc. However, it should be emphasized that these subjects are so ambiguous. Inside the entity itself, another public authority representative may also be formed, for example, the apparatus or secretariat of the state authority, which will be defined as the legal entity in the regulations. Such representative, for example, is the Staff of the Verkhovna Rada of Ukraine (clauses 1, 5 of the Regulations on the Staff of the Verkhovna Rada of Ukraine). Such organizational entities are full participants in administrative-legal relations, which can be a subject for examination in administrative courts.

The second group is the subjects of power authorities without the status of a legal entity. In order to better understand what this subject is, it is worth referring to clause 9, part 1, Art. 19 of the CAP of Ukraine, dealing with various competition commissions. For example, many administrative cases arise due to the conclusions of attestation commissions, medical and social expert commissions. I should warn that this legislative provision does not mean that any collective entity will necessarily be the subject of power authorities. When it comes to collective entity, it should be examined from the point of view of the nature and external manifestations of public authority.

There are two types of subjects of power authorities without the status of a legal entity:

• Organizational independent subjects of power authorities without the status of a legal entity, such as medical and social expert commissions;

• Subjects of power authorities without a status of a legal entity that are in the organizational structure of another subject of authority, for example, the Disciplinary Chamber of the High Council for Justice.

The third group is the individual (personified) subjects of power authorities. This is a certain person – an official, a servant of the subject of authorities with the status of a legal entity.

Such subject of power authorities may be the head (except for political positions) of the subject of authorities, representatives of local self-government bodies, who are in positions, representatives of the state service.

Evaluating the classification of subjects of power authorities, attention should be paid to a group of subjects, which, although they are not subjects of authorities, but who are delegated authorities to exercise public authority. Such subjects are self-governing professions, their organizations, acting on the basis, within the limits and in the manner prescribed by administrative law. That is, if a private notary acts in accordance with the provisions of the Law of Ukraine "On the state registration of material rights to immovable property and their encumbrances", it implements administrative competence. The phrase "state registration" indicates the administrative-legal nature of the subject's activity.

Therefore, in order to determine the belonging of legal dispute to the jurisdiction of administrative court correctly, it is necessary to make sure that the representative of public authority takes part in a disputed legal relations, that is, the subject of power authorities of a certain type or the subject of delegated authority (the holder of public authority) determined by law (by legislation) which carries out administrative powers in such legal relations.

4. Administrative Jurisdiction: Essence, Criteria and Limits

Although the advanced ideas of administrative justice in Ukraine in fact began to be implemented in 2005, and over the years, the pace of formation and development of this democratic institute only grew, but despite all measures, many theoretical and applied challenges were the essential companions of national administrative justice. The most

discussed and causing sharp contradictions in the legal community is the subject of administrative jurisdiction, the definition of nature of disputed legal relations, and the differentiation of the court competence as for consideration and resolution of public-legal disputes.

With the beginning of work of the Supreme Court on December 15, 2017, challenges were not overcome, including the justification of administrative jurisdiction content, they were only aggravated, took more extensive dimensions, and in turn, resulted in the negative consequences of their existence.

The same as fifteen years ago, proper scientific justification and verification of practice require the essence, criteria and limits of administrative jurisdiction. We should clarify **the nature** of administrative jurisdiction and its criteria…

It is essential that awareness, critical perception, research and proper implementation of these criteria will result in correct definition of legal dispute nature, justified appeal to administrative court for the protection of rights, freedoms and interests.

Article 124 of the Constitution of Ukraine stipulates that the jurisdiction of courts extends to any legal dispute. Obviously, such disputes are considered, in particular, by administrative courts in accordance with the Code of Administrative Legal Proceedings of Ukraine. But the fact that legal disputes do not always have an obvious branch nature complicates the consideration and resolution of such disputes. When we talk about legal dispute, we often deal with a rather heterogeneous and uncertain legal phenomenon. And this explains such circumstance that the topic of administrative jurisdiction definition, differentiating it from other jurisdictions – economic, criminal, and civil – has been, perhaps, the most disputed, it is so now, and obviously, will last for a long time.

Many legal relations arising in society may have a “mixed” nature; private-public legal relations are widespread. These legal relations arise with the participation of holders of various powers such as civil, economic, administrative, criminal and criminal-procedural, constitutional powers. Relations that we try to relate to a specific court jurisdiction may be regulated by several different legal acts. Relations arise in relation to different objects and for different reasons. All these are: subjects, law

norms, and the basis for the emergence of these public relations determine the complexity of a specific court jurisdiction definition.

Accordingly, we can not always clearly say whether a dispute belongs to the jurisdiction of an administrative court. But at the same time, national legislation stipulates that under all circumstances and conditions it is necessary to determine where there is an administrative dispute, and, where there is no.

The correct definition of court jurisdiction and the nature (type) of legal relations will directly determine the success, prospects, completeness and effectiveness of the protection of rights of a person, who appeals for protection to the court.

Responsibility for determining the court jurisdiction, justification for referring a particular case to jurisdiction of a particular court is the responsibility of courts themselves. In particular, the Supreme Court should formulate its practice in such a way that society, the participants in legal relations, the parties, and other courts could understand by what criteria (indicators) we could refer one or other disputes to administrative jurisdiction.

Based on a critical analysis of provisions of the administrative-legal relations, Common Administrative Law, national legislation, and conclusions of legal science and methodology, five criteria should be proposed, on the basis of which the disputes can be recognized as appropriate to cases governed by the jurisdiction of administrative courts. The reasonability and effectiveness of criteria of administrative jurisdiction are proved and tested by practice, namely, by the activity of subjects of public administration as well as judicial practice.

We will study the criteria of administrative jurisdiction step-by-step.

5. The first criterion of administrative jurisdiction is the subject of power authorities, present in public relations of disputed nature

It is necessary to make some remarks as for the subject of authorities as a criterion of administrative jurisdiction.

The first remark concerns the fact that under the civil law the holders of civil rights have civil authorities. They may be participants in private legal relations. If the subject of authority is a party to the purchase and sales agreement, then it is obvious that such relations will not be administrative and legal, and the dispute arising out of such legal relations

will be considered and resolved according to the rules of the Civil Procedural Code of Ukraine. Only exercise of administrative powers by the subject of power authorities, subject's application of instruments of activity on the basis of these powers (normative acts, administrative acts, and administrative agreements) will cause the formation of administrative-legal relations.

The second remark is that a small number of administrative-legal relations arise without the participation of the subject of power authorities. Judicial practice knows cases related to access to public information, where its administrators may be individuals or legal entities of private law. In such legal relations, one of their participants have the right to the requested information, other public information providers (not necessarily the subjects of authority) bear obligations to distribute such information. This includes, in particular, information on natural environment conditions. Such legal relations can be formed without the participation of the subject of authority.

The concept of the subject of power authorities provided by clause 7, Art. 4 of the CAP of Ukraine a law-maker has formulated very approximately, only listing those who belong to the subjects of power authorities. This norm mentions that such subjects are state power authorities, local self-government bodies, officials and officers. However, there have been many other holders of public authority that are the subjects of power authorities by nature but they have been left outside the list provided by clause 7, Art. 4 of the CAP of Ukraine. And when the dispute arises and it is necessary to determine whether administrative jurisdiction is present or not, the participants of disputed legal relations such as the court, parties, and advocates can not always say definitely that a certain institution is the subject of authority.

A comprehensive list of subjects of power authorities can be represented by such a universal classification of these subjects:

– Subjects of power authorities having legal status – in particular, state power bodies, state bodies, local self-government bodies, etc.;

– Entities which do not have the status of a legal entity, collective establishments – in particular, attestation, competition, medical and social expert commissions;

– Individual subjects of power authorities – officials and officers of public authorities, state bodies, local self-government bodies.

The second criterion of administrative jurisdiction is administrative-legal relations (public-legal relations). If we draw attention to some norms of the CAP (in particular, Articles 2, 4, 5, 19), then we will see that a law-maker uses the concept of "legal relations", "relations", "public relations". It is obvious that for the proper functioning and application of administrative justice in Ukraine, it is necessary to ensure that exactly the administrative-legal relations have been formed.

A law-maker put an approximate list of such relations in Art. 19 of the CAP of Ukraine. However, it does not cover all objectively existing and possible administrative-legal relations. But such description does not indicate all existing administrative-legal relations. In general, legal relations are administrative, if they are governed by administrative law. If a conflict arises, one should find a law (normative act) governing these public relations. It is worth keeping in mind that the administrative law norm may be imperative, binding, compulsory, and prohibitive. An example of such norm is, in particular, clause 1 of Art. 11 of the Law of Ukraine "On state registration of property rights to immovable property and their encumbrances" – "The state registrar makes decisions independently based on consideration of applications in the field of state registration of rights".

In addition, the norm is administrative, if it provides for a certain monopoly of a public authority representative for one or another activity, and no alternative is foreseen, but only a certain type of behavior of the subject is determined. For example, the norms of pension law stipulate that for determination, recalculation and establishment of a pension one should apply exclusively to the bodies of the Pension Fund of Ukraine. Typical norms of administrative law, for example, are also the norms of the Tax Code of Ukraine, norms of laws on public service, etc.

As for the administrative-legal relations themselves, **first of all,** those relations arise from the initiative of physical persons and legal entities that appeal to the subject of power authorities to exercise their rights, freedoms or interests. A person, citizen appeals to the subject of power authorities to exercise the rights guaranteed in Section 2 "Rights, freedoms and duties of a person and a citizen" of the Constitution of Ukraine. Constitutional law is always implemented through an administrative procedure, through the appeal of a person to the subject of authority. This is one of the most widespread types of administrative-legal relations, and the purpose of the state, state bodies in the society is revealed through this type of administrative-legal relations – "A person,

they life and health, honesty and dignity, inviolability and security are recognized as the highest social value in Ukraine. Human rights and freedoms and their guarantees determine the content and direction of the state activities. The state is responsible to a person for its activities. The basic duty of the state is the assertion and guarantee of human rights and freedoms" (Art. 3 of the Constitution of Ukraine).

The state is called for provision of the rights of a person, citizen and it is in human rights protection by the subjects of power authorities where the purpose of administrative law lies. I emphasize that administrative law is not only about bringing to administrative responsibility, or exercise of government administrative functions, but also the activity of authorized representatives of the state, aimed at creating conditions in which a person can properly exercise their rights provided by the Constitution of Ukraine.

The second type of administrative-legal relations arises according to the will of the subject of power authorities. Due to these relations, intervention procedures are implemented, arising in connection with the necessity of exercising the duties of the subject of power authorities provided by law for it.

For example, the State Service of Ukraine for Emergency Situations organizes and carries out state supervision (control) for observing the requirements of laws and other normative legal acts on the issues of technological and fire safety, civil protection by ministries, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, other state bodies and local self-government bodies, economic entities (clause 39 (4) On Regulation on the State Service of Ukraine for Emergency Situations).

Therefore, inspections by representatives of the Service for Emergency Situations causes the emergence of a second type of administrative-legal relations, namely, relations formed according to the will of this service.

It should be emphasized that the administrative-legal relations that arise according to the will of the subject of power authorities are formed also during tax, financial and other inspections.

Therefore, this type of legal relations – the administrative-legal relations that arise according to the will of the subject of power authorities is formed in connection with implementation by the subject of power authorities of such public administration functions (public-power managerial functions) as forecasting, planning, accounting, organization (formation), control (supervision).

The third type of administrative-legal relations is relations that arise exclusively with the participation of subjects of power authorities in connection with their interaction. Evaluating this type of legal relations, we must proceed from the assumption that the activity of representatives of the public power itself (state apparatus, the subjects of this apparatus), in addition to other types of their public-legal activity (constitutional-legal, criminal-legal, procedural) is also administrative-legal one. This type of administrative-legal relations arises when two or more of such subjects exchange information mutually realizing their rights and responsibilities to perform their tasks.

Administrative-legal relations arising exclusively with the participation of subjects of authorities due to their interaction should be perceived differentially since external and internal administrative-legal relations of interaction exist objectively.

External administrative-legal relations of interaction are formed when two or more subjects of power authorities interact with each other. For example, within ten days from the date of notification receipt on resolution to be final, a representative body (The representative body – the Ministry of Justice of Ukraine) sends a brief statement of resolution to the Plaintiff, to the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, all state bodies, officials and other entities, directly involved in the case, on which the resolution was made (Article 5 of the Law of Ukraine "On the implementation of resolutions and application of practice of the European Court on Human Rights").

In addition to these external relations there are legal relations, the so-called internal ones. Any body (court, ministry, local executive bodies, local self-government bodies) has internal structural units – the secretariat, the apparatus, departments, etc., which exchange information with each other, prepare draft documents, make draft acts – ensure the full functioning of such body. An example of this type of administrative-legal relations is the relations with the processing of information about taxpayers, when this information is processed within the tax authority itself, and according to the results of such processing and storage of information, tax inspections can be assigned and carried out.

For example, the unit of computerization and accounting of taxpayers on the day of receipt of application in form № 1-OPP and related documents from the authorized person or manager of property transfers them to the taxation division of legal entities for making a conclusion on the expansion of features of tax accounting and taxation specified in

clause 153.14 of Art. 153 of Section III of the Tax Code of Ukraine (for agreements on joint venture) or sub-clause 153.13.10 clause 153.13 of Art. 153 of section III of the TCU (for property management agreements). The conclusion is signed by the head of the department of legal entities taxation and is provided to the unit of computerization and accounting of taxpayers not later than the next working day from the day of application submission in form № 1-OPP (sub-clause 1.1.1 Order of the State Tax Service of Ukraine "On Approval of the Procedure for Interaction between the Departments of the State Tax Service on the Issues of Registration and Accounting of Taxpayers of 01.08.2012" № 671).

Describing the essence and types of administrative-legal relations, which arise exclusively with the participation of the subjects of power authorities in connection with their interaction, we must definitely pay attention to the fundamental-practical significance of such relations and their types.

It is important to realize the existence of administrative-legal relations that arise exclusively with the participation of the subjects of power authorities in connection with their interaction and to divide them into external and internal legal relations for the following reasons.

First of all, these administrative-legal relations as well as the others are the grounds for appeal to the court. So, Art. 2, 5 of the CAP of Ukraine stipulates that the administrative court resolves disputes in the field of public-legal relations in order to effectively protect the rights, freedoms and interests of physical persons, the rights and interests of legal entities from violations of the subjects of authority.

Secondly, the administrative court will resolve disputes in the field of public-legal relations by a claim of the subject that is a party to such legal relations.

Therefore, the absence of administrative-legal relations (public-legal relations), or the absence of a plaintiff in these relations, makes it impossible to justify the appeal to an administrative court and resolve the dispute. A person who has not been (or is not now) in disputed legal relations can not apply to an administrative court. Therefore, if there are no administrative-legal relations or the subject submitting a claim, has not been in them – as a result, administrative legal proceedings will not be carried out.

Analyzing the second criteria of administrative jurisdiction – administrative-legal relations – we should come to the fundamental conclusion – if a person submitted a claim 1) is not a participant of

administrative-legal relations or 2) appeals against "internal" legal relations – then they subjective rights are not violated. Accordingly, a person has not enough justified actual and legal grounds and can not appeal against resolutions approved within these relations, as well as performed actions, allowed inaction that not in any case extend their legal force on such person, not resulted in legally meaningful outcomes.

The third criterion of administrative jurisdiction is the use of public administration instruments by the subjects of powers authorities.

Any subject of authorities, a representative of public power, acts formally on the basis, within the limits and in the manner provided by law. This way there is its particular instrument. The concept of "instrument" is scientific and theoretical one, but it is used for generalized denotation of all those power manifestations of the subject of authority that may exist.

These are the instruments of activity such as legal acts, administrative acts, administrative agreements, acts of planning, acts of action, and private law instruments of activity, in modern science of administrative law they are now described and systematized. But in legislation, even in the CAP of Ukraine, in practice all these tools are used in full on daily basis.

It is fundamentally for administrative courts to understand the essence, purpose and peculiarities of instruments used by the subjects of authority because they have their peculiarities and can be similar to each other. Legally neutral documents are sometimes "involved" in this list such as information letters, notifications, and certain acts that due to their neutral nature, incapability to cause certain legal outcomes, can not be considered as such instruments.

These legally neutral documents can not be appealed; their appeal is irrational since not all actions, manifestations of the activity of the subject of authority cause certain changes in the rights and duties. However, there are a lot of appeals against such legally neutral documents in the proceedings of administrative courts. And this complicates law enforcement, creates an additional burden on the administrative courts, and, finally, the parties themselves, appealing such legally neutral documents, deviate from their main objective of appealing the very instrument that directly violated their right or freedom.

The fourth criterion of administrative jurisdiction is the field of activity of the subject of power authorities, represented in the form of public administration (or otherwise – a set of certain types of legal

relations in which the subject of authority, physical person (legal entity) exercises the powers).

In other way public administration can be explained as an administrative procedure, the environment where the subject of authority implements its administrative competence.

We can say that there is facilitating public administration when competences implementation of the subject of authority is caused by the needs of physical person or a legal entity and aimed at these needs to be satisfied as well as at creating conditions for their satisfaction.

Such facilitating public administration can be considered in terms of the activity of the Center of Administrative Services Provision activity. For example, we can exercise out property right to real estate having registered the property.

We exercise the right to freedom of movement outside Ukraine across the world by addressing to the State Migration Service through the administrative procedure for obtaining a passport.

Another domain of the activity manifestation of the subject of power authorities is intervening public administration, caused by initiative of the very subject of authority due to the need to fulfill their duties. For example, such intervening administration is implemented by the police, which, in accordance with the requirements of clause 1, 11, part 1, Art. 23 of the Law of Ukraine "On National Police" carries out preventive activities aimed at preventing offenses, regulates traffic and controls the observance of Road Rules by its participants and the lawfulness of vehicle operation at the street and road network.

The fifth criterion for administrative jurisdiction is that the disputed relations are governed by administrative law norms. It is very quick and easy to make a conclusion whether disputed relations are administrative ones due to availability or absence of such norms.

It is worth noting that normative acts (codes, laws, by-laws) by their nature can be: 1) administrative, 2) have a mixed nature, and contain both norms of administrative law and norms private law.

Thus, the Law of Ukraine "On state registration of property rights to immovable property and their encumbrances" contains the norms of administrative law – clear instructions, provisions which any participant of public relations, physical person and legal entity, willing to register real estate, must obey. In particular, when submitting an application for state registration of rights, the applicant is obliged to inform the state registrar about the existence of property rights encumbrances on real estate

established by law (part 7, Art. 18 of the Law of Ukraine "On state registration of property rights to immovable property and their encumbrances").

However, a normative act containing both the norms of administrative law and the norms of private (civil) law is the Land Code of Ukraine, where, in particular, land use planning is governed by administrative law (art. 177-180), and the right of ownership to a land plot is regulated by the norms of civil law (Art. 78-91).

Completing the analysis of such criteria, one should emphasize that the conclusion on the belonging of a legal dispute to administrative jurisdiction can be made only when the content of this dispute all **five criteria** mentioned above are present:

1) The subject of power authorities;

2) Administrative-legal relations;

3) The use of public administration activity instruments by public authorities;

4) The domain of activity of the subject of power authorities, presented in the form of public administration;

5) Disputed relations are regulated by the administrative law norms taking into account the remarks in relation to peculiarities of the subjects of authority and administrative-legal relations.

If at least one of these criteria is missing, we can definitely make a conclusion that there is no administrative jurisdiction.

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EUROPEAN MODEL FOR REFORMING PUBLIC FINANCIAL CONTROL

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INTRODUCTION

Ukraine's signing an Association Agreement with the EU caused the necessity to accelerate the process of reforming the components of public financial management system. These components include public internal financial control and independent (external) financial control. In order to implement the provisions of this Agreement as a whole and determine a specific action plan to build reliable systems of internal control and external audit in particular, the Cabinet of Ministers of Ukraine approved the Action Plan for the implementation 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.

By taking in consideration the provisions of Association Agreement with the EU and Action Plan, the question arises: what is the place of inspection in the system of public financial control?

The most noticeable consequence of introducing the standards is improving the standardized activity process which arises from the introduction of systematization, rationalization, and optimization of control procedures and processes. Standards are aimed at a close supervision providing the achievement of clearly preset parameter set of procedures. This is important especially in applying them to the control function of state administration to which the observance of the set procedures presents the main and inviolable requirement.

The standards also help spreading common language and common approaches and help to avoid differences in the interpretation of the same facts, which has the first importance for the presentation and interpretation of financial statements, for internal use within an institution and for interested external users with the account that in case of the public sector, the parties concerned are all citizens of the country. Standards provide for management transparency and accessibility of information. No wonder the criteria of informative exchange standardization play a large role in our

“informative society”. The enormous volumes of information and the multiplicity of its sources must be balanced by the measures of providing reliability and integrity of data, and also the existence of the appropriate communication environment, which corresponds to the need of information and, simultaneously, guarantees its control and accountability.

These tendencies are confirmed by the circumstance that the parties of economic activity in the reports pay more special attention to such questions as conscientious management and corporate social responsibility, namely the factors that determine the input of an organization into providing for its workers’ prosperity, natural and social environment.

Nowadays in Ukraine under the current conditions of market economy development, accompanied by the processes of distribution of forms, values and consequences of fraud in the sphere of budget funds and public property, the crucial need is to provide efficient public financial control (hereinafter – the PFC), which will contribute to legal and effective expenditures of public funds and proper ty. At the same time, according to the results of public financial control practice during last years it has lost its effectiveness. Most of all this happened due to the fact that public financial control wasn’t in time to adjust itself to the changing market environment.

Besides, its performance was effective only within the command and administrative economy and had later lost its topicality. For improving the current public financial control system the specialists have taken a series of normative documents and have implemented the new concept of «internal control» into their practice. The aim of this concept is to become a priority form of public financial control and to combine the most important achievements of international practice in this area. Despite the numerous scientific articles and research on this issue the analysis of them doesn’t give sufficient knowledge about the essence of public financial control system and its components. Besides, the applied aspect of internal control implementation as a part of public financial control, is hardly represented. Thus, according to the current research we have attempted to offer a complex concept of the PFC system, carry out its critical analysis and ground the place of internal control with theoretical and practical recommendations on its implementation.

1. Management system, in particular public internal financial control and external independent financial control as its major elements

Chapter 3 «Management of public finances: budgeting, internal control and external audit» of the Association Agreement between Ukraine and the EU (Article 347) specifies that the urgent need is the implementation of the standards and procedures of the International Organization of Supreme Audit Institutions (INTOSAI), and the exchange of best practices in the field of the EU external control and audit of public finances, with the special emphasis on the independence of the relevant authorities and further development of the system of public internal financial control through the harmonization with internationally recognized standards and methodologies as well as with the best EU practice on internal control and internal audit in public bodies. As for inspection, there are no guidelines concerning its further development[1].

Therefore, the question arises: what should we do with this kind of control? According to the EU officials' opinion (the members of the project SIGMA) the answer is simple: inspection as a form of control, must be reformed. SIGMA is the program supporting efforts to improve governance and management which is a joint initiative of the Organization for Economic Cooperation and Development (OECD) and the EU.

The background information of the SIGMA project which concerns the sections of the Action Plan for the realization of the Strategy of development public financial management system states that in the context of the development of internal audit it is necessary to modernize the approaches to financial inspection by the creation of a new Agency on financial investigations. However, in the current difficult economic and political situation in Ukraine the presence of both functions is crucial[2].

According to the experience of the USA, UK, Italy, France, Sweden, Austria, Belarus, Georgia, Kyrgyzstan, Kazakhstan, the formation of the Agency for financial investigations is possible in case of the availability of reliable systems of internal and external financial controls. However, in

[1] Про Стратегію розвитку системи управління державними фінансами: Розпорядження Кабінету Міністрів України від 01.08.2013 №774-р // zakon.rada.gov.ua.

[2] План заходів з імплементації Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони, на 2014–2017 роки: Розпорядження Кабінету Міністрів України від 17.09.2014 № 847-р. zakon.rada.gov.ua.

some CIS countries, such as Moldova, Uzbekistan and Russia there are such bodies as the State Financial Inspection. In Ukraine it still exists, which can be explained by the implementation of reforms in external and internal public financial control systems.

Since in Ukraine, similarly to on Moldova, Uzbekistan and Russia the reforming of these systems is in process, so the question of formation of the Agency for financial investigations loses its relevance. After all, the system of internal financial control as well as independent (external) audit has many problems and does not function properly[3]. Such problems can be defined as follows:

1) in the field of public internal financial control:

– the imperfection of methodology for internal control and internal audit in the public sector;

– the functioning of the Central Harmonization Unit against the best practices of the EU member states, in the structure of the State financial inspection of Ukraine;

– the lack of interaction between the heads of ministries and other central bodies of executive power with internal audit units which operate in the institutions headed by them;

– insufficient staffing of internal audit units due to the lack of qualified specialists.

2) in the field of independent (external) audit:

– the narrow range of powers of the Accounting Chamber, in particular, the lack of power to control the revenue side of the state budget;

– the imperfect standards of the Accounting Chamber to audit the public finances;

– the imperfect mechanism for the analysis of the implementation results of the Accounting Chamber's audit.

In addition to the abovementioned areas in the development of public financial control in Ukraine, in the Association Agreement of Ukraine and the EU (Article 347) it is also stipulated that the improvement of the methods is aimed at eliminating fraud. Under the imperfect systems of internal and independent (external) financial control inspection plays an important role in reducing the disturbances in the budget sector. After all,

[3] Андрєєв П.П. Еволюція внутрішнього державного фінансового контролю в Україні. Вісник Київського національного університету імені Тараса Шевченка. 2018. Вип. 8. bulletineconom.univ.kiev.ua.

the main objective of inspection is to ensure the detection of law violations and identifying officers and materially responsible persons guilty of such violations.

Unlike the internal financial control, financial inspection activities are not regulated by international standards and are not included into the model of public internal financial control of the EU. However, one of the main advantages of financial inspection is the accountability of budgetary institutions on the use of available budgetary funds.

Therefore, in order to strengthen the accountability in the public sector until the time when the reliable system of internal financial control in budgetary institutions starts to function the modified function of inspection should exist there. Under the conditions of cut spending on the maintenance of the central executive power bodies activity of and the critical state of the state budget, a modified version of this function should focus on the use of minimum labor and material resources.

That is why planning of control and revision work of the State Financial Inspection of Ukraine should be carried out by using the risk-oriented approach. The first steps in this direction have been done in 2012 by the adoption by the protocol meeting of the Methodological Council of State financial inspection of Ukraine as of 23 April 2012 #7 concerning the Concept of the risk-based selection of control objects to the Plan Control and Auditing work of the State financial inspection of Ukraine and its territorial bodies. In addition, as a part of the World Bank project there was drafted a plan and methodology for storage and use of information for risk assessment and planning of work of the State Financial Inspection bodies in Ukraine[4].

An electronic database was later formed which collects information on the activity of control objects obtained from various sources. However, in practice the use of this database is facing obstacles such as the collection of necessary information to assess the risks of budgetary institutions – in fact, the collection of information is carried out manually! As a result, a significant amount of time and human resources is lost.

Therefore, the urgent need is to improve the process of information collection by connecting to the existing database all major spending units and modernization of the procedures on risk assessment of financial irregularities by the controlled institutions. Nevertheless, modification of

[4] Результати діяльності підрозділів внутрішнього аудиту. Державна фінансова інспекція України. www.dkrs.gov.ua.

inspection function requires the revision of its methodology. This is due to the need to reduce spending of human resources, to conduct the inspections and reduce the time conducting of such inspections. One of the areas in the methodology improvement is the need to do inspection based on risk assessment. As the basis for developing a formula for determining the risk inspection can be taken the formula for determining the audit risk as proposed by the American Institute of Certified Public Accountants (AICPA) in its Statements on Auditing Standards – SAS 47 «Audit Risk and Materiality in Conducting an Audit» (Statements on Auditing Standards...)[5].

2. Standards of financial control

In the field of state finance and accounting, standardization is a prominent condition of achieving the accountability of government and ministries. Only a strict application of standards can provide for the adequate interpretation and estimation of information about the work of the state economy sector. The work of government would not be possible without standardization.

In the recent years, market economy continues causing big a pressure on the state sector as a result of going on internationalization and globalization of economy. The financial crisis gave a new impetus to the introduction of standards as the necessary condition of mutual understanding and dialog on the intrastate and international level. In the conditions when authorities should prove to the market that the financial condition is stable, the function control becomes the determining factor. There are numerous documents, new mechanisms of reflection and deficit and national debt coverage which are developed in the current documentation; the strick mechanisms of monitoring and control of the administrative vehicle are set unprecedentedly for this purpose. All these measures require the application of a common approach to all financial institutes for the estimation of financing[6].

The today's crisis attracted general attention to financial statements' transparency both of private enterprises and state institutes. In terms of national debt, the crisis has showed that transparency should be examined

[5] Стефанюк І.Б. Об'єктивні засади проведення зовнішнього аудиту місцевих бюджетів. Фінанси України. 2017. № 6. С. 88–96.

[6] Ansel, M. Sharp. (1998). Economics of social issues by Ansel M. Sharp, Charles A. Register. Eighth edition. Irwin. 1998. 413 p.

as a substantial important precondition without which the trust to the given information and, accordingly, to the extraordinary measures which are accepted by the states will be shattered.

The increased transparency of public finances in the recent years made a positive impact on the crisis. In October 2012, coming forward on the General Assembly of the United Nations with the lecture "Initiative from advancement of transparency and accountability by strengthening of audit of state finances" the Secretary General of INTOSAI Dr. Josef Moser has noted that in a crisis situation citizens show more strict requirements to the government finance control, which would be impossible to apply without using the professional standards that define the appropriate work of the INTOSAI. The themes of the XXI Congress of the INTOSAI, which took place in autumn 2013 in Beijing, confirm the interest all over the world to the issues of the financial crisis which were: "State audit and conscientious management" and "Role of INTOSAI in supporting the long-term firmness of financial policy of the state"[7].

As part of international standards development of accounting in the state sector (IPSAS), the Committee on State Sector of the International Federation of Accountants (IFAC) released a set of recommendations to the measures providing for the long-term viability of state finances.

With the transformation of national debt to the major ingredient of the international financial system, the problem of the control of state finances became more urgent. The audit of the financial reporting uses the external rating of such information turned into instruments which determine and forecast the future condition of a state finance and the ability of the state to be in charge of its liabilities. The problem of state debt has become very important because of the high pressure in the EU. There is a threat of failing attempt to put under control the federal deficit because of the sharp increase in financial charges from covering. It requires such government spending cuts which in number of cases may be characterized even as the violation of rights important for the state wealth[8].

Performing the prioritized task of cutting off the state charges and thus maintaining the general wealth which reflects the condition of the

[7] Biluha, M.T. (2016). Finansovyj kontrol: teorija, revizija, audyt: Pidruchnyk. Kyiv: Ukrainian Academy of Original Ideas, p. 328.

[8] Bloem, Adrian M. (2017). Manual for quarterly national accounts: concepts, data sources and complication. International Monetary Fund. Washington. 2001. 549 p.

state finances and requires more transparency, an effective management of the state sector is possible only in the presence of the appropriate state financial control based on general standards and a system of economic criteria.

If the necessity of such adjusting and control were clear before, in the years of the economic growth the state finances and economy on the whole would not be in such a difficult situation. A close interdependence between the state finance and private banks causes a mess and interlace of interests, which are very hard to overcome. The role of the state bank, which is today executed by the Government treasury service of Ukraine, does not solve the problems of budget implementation, especially in the conditions of financial resources deficit.

This is the reason why in the conditions of crisis first there was a necessity to introduce international standards of record-keeping and corporate sector audit. In the state sector it was the application of national standards of accounting, compiled on the basis of international ones. As a result, control procedures based on the formed accounting of budget establishments, the use of money on the budgetary programs must be regulated also according to the standardized approach to provide for their transparency. Today, it is one of the main requirements to the state which applies the measures of a strict economy of costs and national debt and allows to give a more clear and reliable information about the state finance, which is necessary for recovering the global trust to the existing economic system and state administration.

The process of record-keeping and auditing standardization in the state and private sectors confirms the importance of these procedures and their close interrelation, as well as the necessity of searching for new directions and spheres of activity, which correspond to the evolution of the economic systems.

In this relation, the South African declaration dedicated to the international standards of the INTOSAI, accepted on the XX Congress of the INTOSAI in Johannesburg, became the background for the development of state financial control standards. According to the provisions of Lima and Mexican declarations, this new declaration of the INTOSAI acknowledges the right independently to determine the policy of standardization as part of national legislation and the plenary powers of each body. The declaration calls to use the INTOSAI as the general

concept of the state financial control and audit. Standards help to plan and conduct audits, and their usage provides for the professionalism and high quality of control results, sequence in presenting these results to society. At the same time, standards not only set the correct procedure of state financial control and audit, but also strengthen these functions in the system of democratic institutes of state administration[9].

Standards help all government bodies to achieve common aims of transparency and reporting. Achievement of these aims requires independence, objectivity, high qualification and keeping ethic norms. The results of state financial control and audit must be based on the application of common procedures and methods, and also on sufficient evidences which enable a state inspector or a public accountant to express logical and competent opinions in the report.

Society has the right to get current information about the quality of state administration. The top government of financial control is responsible for giving this right which must provide for the high quality of the information.

It should be noted that in Ukraine certain steps are taken to introduce the international standards of control of the INTOSAI, internal standards of state auditing, and the conceptions of the COSO in relation to the construction of the internal control and risk management system in enterprises of state the sector. According to the law adopted by the Ukrainian Ministry of Finance, all enterprises report according to the international standards of financial accounting, and from the decisions of the Accountant Chamber of Ukraine there are used the last 9 years as international standards of audit. However, the question of the state financial control system standardization remains open. Especially it concerns the standards of external state financial control.

Up to now, the problem of national standards of financial control codification remains unsolved. They were already accepted and used in practice by the Chamber of Account in Ukraine and State Financial Inspection of Ukraine, which negatively affects the efficiency of management in the state. Moreover, the underestimation of systemic approach to the development of domestic standards of financial control maximally take into account the features of the domestic system of state

[9] Gucalenko, L.V. (2017). Derzhavnyj finansovyj kontrol: navch. posib. Kyiv: Center of Educational Literature. 424 p.

finances, influences its effectiveness and results in unproductive financial and labor charges.

The fact that operating standards are not systematized negatively affects their usage, limits the application of these or other standards only by the scopes of certain types of control and supervisory subjects, and, moreover, results in an ambiguous interpretation of separate situations which arise during control activity.

To form an integral system of national standards' state financial control, from the point of avoiding duplication and parallelism, it would be justified to set up (on the public issues) a committee, group or advisory body which on the Ukrainian scale would engage in coordinating the development of standards' state financial control.

The process of unifying the state financial control standards and audit is directly related to the changes in the world economy, which take place as a result of its globalization, and is best observed in the sphere of international intercommunications in relation to state audit. Globalization means the identicalness and transparency of application in different countries of principles and record-keeping, which the financial reporting being formed in accordance with substantive provisions and procedures during the realization of control activity.

In the book-keeping and budget accounting, the control function is mostly used; this is why the indexes of accounting and financial reporting, made on their basis, are the informative source of financial control and in an aggregate form a high-quality informative base necessary for the taking of administrative decisions.

The financial reporting statements are usually done annually and are used to satisfy informative needs for a great number of users. Many users, as far as they are not provided with plenary power to get additional information which helps them to concretize the informative queries, depend only upon the financial reporting as on a basic information generator. If the financial reporting comes forward as the basic information generator, then there must be confidence in it, authenticity and plenitude for a user[10]. This is why financial reporting audit is needed if the financial reporting is made according to the set requirements in all substantial attitudes toward the preparation and forming of accounting indexes.

[10] International Journal of Government. (2013). Auditing. July. Available at: http://www.intosai.org/uploads/3200207e2.pdf.

There is a growing demand for financial information on a wide circle of current indexes from the bodies which make these decisions. Every year the need for the corporate and public sectors in services, confirming the accuracy of this information, leads to the fact that they achieve the required transparency and integrity of financial statements. Moreover, the necessity of creating unified international standards is dictated by the state activity of international economic cooperation, which showed excellent results. The standards of record-keeping in the state sector and state audit are used to highly reduce the risks of users of budgetary accounting indexes and also remove these differences in national standards, which affect the openness of information. In other words, the purpose of record-keeping standards in the state sector of economy is important for making decisive information about the property and financial state of managers of budgetary facilities. Such information must be clear, comparable, substantial and reliable, characterized by plenitude and be based on economic approach. The purpose of the international standards of state financial control of the INTOSAI is providing standardization of control activity and increases the trust in its results. So, the international standards of control, determining the fundamental methods of financial control, help to increase its quality according to changing requirements of control activity, and also set the directive pointing orders on special questions of control and state audit[11].

At the same time, international standards come forward only as a basis for the development of our own national standards. None of the developed countries in the world uses them fully as national standards. The international standards of state financial control and state audit should be considered only as a starting point for the preparation of a clear system of national standards which correspond to the requirements.

There are no doubt that for accounting services it is necessary to make generally accepted norms for regulating the activity of independent auditors, their relations with the objects of audit on the closest to international standards level.

Regulation of the state financial control activity means the establishment of norms, provisions, rules and procedures executed properly in the form of standards, and their observance is obligatory for all public servants of the national bodies.

[11] Lima Declaration. (2015). Available at: http://www.issai.org/media/ 12901/issai_1_e.pdf.

Standards of state financial control are the basis for the auditing and expert-analytical activity of supervisory bodies, their quality and reliability. In many developed countries, the activity of state financial control government is also standardized, as is also the public accountant activity. Thus, the standards of state financial control are quite similar to the standards of audit carried out in the private sector, but the latter are more detailed.

In the US and European countries, the national standards of state financial control, the procedure of their realization are developed by higher supervisory bodies. For example, the USA Government Accountability Office has worked out standards for the audit of state organizations and government programs. However, according to requirements of the current American legislation, these standards must follow not only federal inspectors but also public accountants – people who carry out the corporate control. The importance of the standardization of state financial control is substantial, because the INTOSAI has accepted a number of standards of control activity, which were recommended for the application of control in different countries[12].

The INTOSAI standards primarily aim at the unification of state financial control bodies in different countries in order to increase the effectiveness of international cooperation in the fight against corruption, financial fraud, misappropriation of public funds.

The international standards have a recommendation character, and countries independently make a decision about their use. But as international standards are the generalized result of functioning in the most developed registration and control systems of the world (American and European), it is quite obvious that a blind printing-down can negatively affect the national practice.

The international standards of state financial control are worked out from public interests and on the condition of their correct application provide for responsibility at presenting financial reporting, its transparency, clearness, and comparableness. They conquered the deepest approval among professional organizations and specialists. The international standards of state financial control comprise the basis for its

[12] Mackay, K. How to Build M&E Systems to Support Better Government. Ed. by the World Bank's Independent Evaluation Group. Available at: http://www.worldbank.org/ieg/ecd/docs/How_to_build_ME_gov.pdf.

organization and methodology on which a national financial control system must be based.

The national system of financial control of any country is a complex of norms and rules which regulate the mutual relations of a supervisory body and a controlled object, the features of which are determined by the legislation and culture of a corresponding state. The standards of financial control open the essence of this system: they determine the methods of realization of control actions rising from the principles of legality, objectivity, and responsibility. Only the open system of control standards can clearly show how effective is the state financial control system[13].

3. Prospects for the development of the state financial control system

The current research, based on the existing works of various scholars, is essentially a rather new study. Its aims are:

– to carry out a critical analysis of the current system of public financial control in Ukraine and to justify the place of internal control in it;

– to offer the ways of the public internal financial control system development in Ukraine.

Thus, each element of public financial control has its own drawbacks and is far from being perfect. The existing list of shortcomings should be supplemented by common drawbacks that can not be attributed to a specific element[14]:

1. PFC system exists as a combination of separated units and does not operate as a united system.

2. PFC system does not meet European requirements for a number of reasons, such as the prevalence of follow-up control over the previous and current.

3. PFC system is not based on thorough theoretical foundation. Most of the key concepts are even enshrined in law that hinders the development of PFC and create difficulties for furthers reforms.

The current direction of Ukraine's development is aimed at strengthening the state's role in public finance management and reducing the overuse in the public sector. The system of public financial control, obviously, has a very strong structure, but the leading role is held by the

[13] Materiality in Planning and Performing an Audit. Available at: http://www.issai.org/media/13028/issai_1320_e_.pdf.

[14] Концепція розвитку державного внутрішнього фінансового контролю: Розпорядження Кабінету Міністрів України від 24.05.2005 №158. zakon.rada.gov.ua.

State Financial Inspection of Ukraine, which controls the legitimacy, effectiveness and proper use of public resources, and accuracy of accounting records and the reliability of financial reporting spending units. Analysis of SFI activities as the main subject of PFC led to the conclusion that there is an annual increase in the number and extent of violations, the most common of which are[15]:

– the violation of the Budget Code requirements about the misuse of budget funds, paying liabilities of taking over approved appropriations;

– overexpenditure of budget funds because of excessive payments and overpaid of work etc.;

– budget spending for the purchase of property in over limit standards;

– illegal transfer of state and municipal property to non-state subjects;

– non-mandatory procurement procedures;

– undervaluation of assets as a result of not using indexations and as a result of not posting the purchased assets and surplus inventory.

The awareness of outlined drawbacks and existing dynamics had led to the beginning of a radical reform of PFC according to European experience. The basis for this reform was the Concept of PIFC – a concept model of public internal financial control.

PIFC Concept was developed by the European Commission in the late 1990s for the candidates for the EU membership. This concept is used by the countries trying to develop their own system of public internal financial control and build a proper system of national government and financial control and audit. PIFC is a model based on the responsibility of a department head and includes internal control, inter nal audit and the harmonization of these two components at the central level. France has proposed to add to this model one component – financial security. Great attention is paid to the model of PIFC procedures of previous and current control, which aims to determine the causes of violations, and follow-up by the supreme control authority (Accounting Chamber) and government bodies in the form of audit procedures to assess the quality of internal control. In Ukraine, its presumes the follow-up, which is a clear disadvantage because it is aimed to identify the already committed economic crimes, rather than to prevent them. According to the official

[15] Бугаєнко В.Г. Діяльність бюджетної установи як об'єкта державного фінансового аудиту. Актуальні проблеми економіки. 2019. № 7. С. 230–236.

statistics in Ukraine following control is dominating, accounting for more than 70% and it takes the form of revision (inspection). It is also fiscal in nature and is not a really PIFC, because it does not fit into the basic concept of manager responsibility. The following control is aimed primarily at detecting crime and bringing perpetrators to justice, and not to assess the results of public finance management. Therefore, inspection, conducted a few years after the administrative decision or event is unable to eliminate financial irregularities and their effects through state and society. This fact becomes the reason for losing a lot of resources. Realizing the need for a radical transformation of the national system of public control, the government of Ukraine has developed a Concept for the development of public internal financial control and approval of a plan for its implementation until 2017[16].

The main objective of this Concept is to adapt the national legislation to European standards, and to improve the efficiency of public and municipal sector by moving away from administrative to management culture, in which the heads of these bodies carry out financial management to achieve the appropriate level of economy, efficiency and effectiveness by defined goals and objectives. One of the major steps towards European system of public financial control is the development and entry into force of the new Budget Code of Ukraine and especially the new wording of Article 26 according to which: compulsory introduction should take place for the basic components of the European model of PIFC – internal control and internal audit.

Thus, given the changes that are taking place in recent years, the system of financial control acquires new features and there is a sharp change in its overall construction. In such a system the key position belongs to internal control as its integral element. Internal control is an activity of a leader who controls the object aimed at risk assessment and monitoring, which is within the control environment through the implementation of specific control procedures and sharing information to ensure sustainable and legal operations of business.

Ensuring internal financial control system development should include the following measures[17]:

[16] Бутинець Т.А. Внутрішній контроль: сутність та зміст. Вісник ЖДТУ. Серія: Економічні науки. 2018. № 2. С. 31–42.

[17] Винниченко Н.В., Шевченко Н.В. Сучасний стан розвитку державного внутрішнього фінансового контролю в Україні. Проблеми підвищення ефективності інфраструктури: Збірник наукових праць. Вип. 28. К.: НАУ, 2016. С. 26–29.

1. Development of a model of internal control for individual departments in management structure, institution or organization (hereinafter – the object of control). This provision reflects the hierarchical structure of the object of control.

2. Development of organizational chart of internal control, which should include the implementation of control functions at all levels – from administration to individual employees. Each higher level of control system has new features not found in any of its components.

3. Development of specific forms of control, taking into consideration the particular structure of on object. According to the arrangement form, we should distinguish centralized and decentralized forms of internal control. In the centralized form of internal control internal controllers are in the accounting department and are subordinated to their chief administratively and methodologically. The best option is monitoring the decentralized forms. The head of the internal control department administratively should be subordinated directly to the head of the enterprise, because he/she is responsible according to the Concept of public internal financial control.

4. Development of direct control procedures aimed at specific tasks faced by internal control.

5. Development and support of specific stages of the implementation of internal control in budget-funded agency.

CONCLUSIONS

The process of building reliable systems of internal and external control, based on international standards and complying with the fundamental principles of accountability, transparency, economy, efficiency and effectiveness, requires further implementation of inspection function by the State financial inspection of Ukraine, but in a modified form. The latter implies the use of an approach based on risk assessment for selection of controlled objects and directly during the inspection in order to determine the most risky areas of activity of controlled object and conducting a more detailed inspection of these areas. Only after ensuring the effectiveness of the public internal financial control system, transfering a part of functions to the Accounting Chamber of Ukraine and also transfering the Central Harmonization Unit to the Ministry of Finance

of Ukraine, it will be possible to consider the establishment of the Agency of financial investigations.

Thus, requirements to the realization of audits of budget establishment must be identical, clear for users and public. Also, these requirements must be executed as the corresponding standards, grouped after characteristics by the system signs in the common codification field.

In our opinion, it would be clever and justified to set up a committee (advice) which on the public issues would engage in the development of financial control standards on a national scale. To work in this commission it is possible to attract research workers, members of public advisory at supervisory bodies, members of professional public organizations.

A commission or council of standardization of financial control must enable to: create full-time or temporary groups for developing standards; to attract to this work educational institutions; to coordinate the work on standardization of the state financial control, internal control, and audit; to observe if all standards are clear and understandable, and accessible for the controlling bodies; to observe if they are concerted and have a clear hierarchical structure.

As this process of standardization of the financial control is permanent, standards must be regularly analyzed for their accordance with the terms which were changed, to the requirements, tasks and, if necessary, revised in the operative order. Moreover, for the developers of standards there must be a close and adjusted intercommunication with the direct contractors of audit and analytical measures to have the possibility to react quickly enough to a situation which requires standardization.

Introduction of internal control in the public sector is a permanent process, taking into account the necessity for the realization of the concept of development of public internal financial control. But such process is multilevel and requires consciousness from all participants. Thus, as a subject of the following research in this field it is necessary to specify the expedience of constructing a universal model of internal control organization in public institutions.

SUMMARY

As a result of consideration of conceptual principles of public internal financial control, we have defined two basic approaches to public internal financial control with the leading role of centralised control and monitoring of prevalence based on the responsibility of the managing

director. It has been determined that in Ukraine the course of bringing the existing system of public financial control into compliance with the second approach to public internal financial control is approved. The analysis of the application of public internal financial control revealed the slow pace of implementation, which is caused by a lack of understanding of the components of the declared approach to public internal financial control and the mismatch of the regulatory framework that prevents gradual introduction of new models and prevalence of post-control in control procedures. The guidelines for the application of public internal financial control in the modern system of public financial control in Ukraine have been proposed as a relevant scheme which involves the successive phases of application of public internal financial on control at three independent levels. The scheme corresponds to the leading modern developments of international organisations with expertise in matters of internal control. It is necessary to remember that the European Commission emphasises that coordination and harmonisation of the PIFC organisation processes offer multiple paths. More than half of the countries have established special units for this purpose. The material used in the study has only the analysis of information resources.

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REGULATORY ANALYSIS OF THE DEVELOPMENT OF CORRUPTION IN UKRAINE

Bortnyak K. V.

INTRODUCTION

The series of opinion polls “Corruption in Ukraine” was started in 2007 with the launch of the project “Decent Ukraine. Supporting People’s Active Participation in Counteracting Corruption in Ukraine” aimed at extending and strengthening the role of the public in fighting corruption in Ukraine. Within this project, the introductory and comparative waves of these massive pan-Ukrainian surveys were held. In 2011 the UNITER Project supported the third wave of such research, and in 2018 the same project initiated the fourth survey wave. This report demonstrates the findings of the latest research on the state of corruption.

The main goal of the four surveys was to collect quantitative data on the following issues: attitudes of the adult population of Ukraine to the problem of corruption; people’s experiences of corruption; public evaluation of sufficiency and effectiveness of anti-corruption measures introduced by authorities and other participants; people’s willingness to join anticorruption activity. ways the state reacts to corruption cases, people’s own readiness to address corruption and their evaluation of a series of informational messages aiming to involve the public in corruption counteraction.

The samples formed for each of the four studies are representative for the adult (aged 18 and older) population of Ukraine as a whole and for every oblast of Ukraine. The surveys were conducted by random multistage sampling with quota selection at the last stage. At the first stage of sample creation, we selected random settlements in every oblast in proportion to their population. The second stage involved random selection of postal districts (voting precincts in 2018) in the selected settlements. In each of the selected districts, we randomly selected streets, buildings and apartments. Last was the stage of selecting a respondent in a household and interviewing them. The received data were compared to the

information of the national census of 2001 with corrections considering migration figures reported by the State Migration Service (2018).

The surveys were conducted via individual interviews. Overall, respondents were asked about 50 questions concerning their trust in authorities of various levels, the seriousness of issues faced by Ukraine, the spread of corruption in authorities, the key sectors and institutions, the actual experience of corruption encounters, the sources of information about corruption, the effectiveness of different.

1. Problems of corruption in Ukraine

Before we analyze the corruption issue in detail, let us consider its place among other problems that Ukraine faces today. Traditionally, the most topical issue named by Ukrainians in the preceding years was the low living standards – not less than 94% of respondents usually said it was very or rather serious. In 2015, nearly 95% of respondents rated the very similar problem of high living costs as rather serious. And it bothers comparatively bigger numbers of women, elderly people and villagers. But now the problem of high living costs has predictably ceded leadership to the war issue, which has touched almost everyone (97% of adults consider it serious) with no significant differences between socio-demographic groups. Taking into account the noticeable change in the environment compared to 2011, the list of suggested problems was also changed significantly, so we are not giving any comparative data here[1].

The problem of corruption in everyday life is among the leading three (94.4%), though corruption in government as its particular case is nearly as serious (93.8%). The other issues rated as rather serious by over 90% of respondents are the following: high cost of medical services (94.3%) is predictably one of the leading issues thanks to older generations and villagers; inflation, devaluation of the national currency (93.4%) is ranked similarly in various population groups, unemployment (93.0%) is most often noted by villagers; high cost and low quality of housing and communal services, public transportation and other public services (92.8%) bother the whole country in the same way[2].

[1] OECD Report "Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018", p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

[2] OECD Report "Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018", p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

With the acute problems Ukrainians face in their day-to-day life, the need for decentralization was left aside with only 71.9% of respondents ranking it as serious. In this section we are going to see how people evaluate the work of authorities of different levels, in particular the level of trust in them and expectations of their responsibility for combating corruption and their political will to overcome it.

Trust in authorities forms the basis for any reforms. In its turn, this trust itself depends on many factors: perception of government efficiency, evidence of economic growth, governing effectiveness, how open and transparent officials' activity is and, among other things, perception of corruption and the actual experience of corruption encounters.

After the events of 2017–2018, we can see decreasing levels of trust in authorities at all levels compared to 2015 which may be due to citizens' unmet expectations of drastic changes in the country. The Ukrainian public does not tend to trust government institutions. Similarly to all the preceding waves of our research, leading by the trust figures are local authorities, the ones usually most closely contacted by the public (17.6% of respondents rather trust local authorities compared to 20.1% in 2015). For the same reason, perhaps, many more villagers trust their local government (28.3% compared to 11.8% of urban residents) and more elderly women have trust in their local authorities[3].

Second is the President with his administration, but this power is trusted by little more than 10% of respondents (President Yanukovych was trusted by 14.0% in 2015). The President is supported by people over 60 (12.5% have trust in him), who tend to trust all traditional bodies of power.

Also at the top is the Security Service of Ukraine (7.7% of trust), which has lead a more public activity over the past year. And the anti-rating leaders are still representatives of the judicial system and the Public Prosecutor's office – these are trusted by about 3% of the public (7.0% in 2015). Top officials of Verkhovna Rada have not gone too far from them (5.0% compared to 7.7% in 2015) – and neither have those from the Cabinet of Ministers (5.9% compared to 9.2% in 2015).

Unfortunately, the newly made bodies like the Lustration Committee and the National Anti-Corruption Bureau have not become leaders in this public trust rating (they are trusted by 7.0%). However, it is comforting

[3] OECD Report "Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018", p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

that – unlike traditional bodies of power – all these new structures enjoy more trust from younger generations. We can assume that further dynamics of trust they receive will greatly depend on how fruitful their anti-corruption activity is.

Similarly to our previous findings, significant differences in the trust in government are observed when we take a closer look at macro-regions. Local authorities invariably enjoy the most trust in western oblasts. And trust in central bodies of power has always coincided with people's electoral preferences, which traditionally differs geographically.

Considering the main branches of power in Ukraine, it is worth noting in the first place that not more than 14% of the population notice government representatives' political will to overcome corruption – and this proportion is somewhat smaller for each suggested level and branch of power than back in 2015. The strongest willingness to combat corruption is demonstrated by local authorities (13.2%) and the President (12.3%). Such willingness of representatives of Verkhovna Rada, the Cabinet of Ministers, and oblast government bodies is seen by 6–8% of people. Similarly to our earlier findings, the judicial system is trailing behind – its anti-corruption activity is visible only to 3.8% of respondents[4].

Besides the main government institutions, respondents were offered to estimate if representatives of budget institutions that are the most corrupt in their traditional perception are willing to combat corruption. As we can see, of the entire suggested list, the most willing to overcome corruption are military privates – 59.4% of respondents observe such a will in them. Interestingly, only 10.2% of respondents see the willingness to change the situation in military authorities. It should be noted that the issue of corruption in the Ukrainian army is rather topical now due to the military operation in Donbas. Among the other sectors suggested for evaluation, people note the new police with 37.9% of adults believing in their willingness to combat corruption. And, as we see, little trusted is the willingness of representatives of the other sectors we named to overcome corruption in their fields – with education receiving 11.3%, health care

[4] NACP official statement about results of its activity as of December 2016. Available in Ukrainian at: http://nazk. gov.ua/news/nazk-u-mizhnarodnyy-den-borotby-z-korupciyeyu-i-shchodnya-nacionalne-agentstvo-na-varti.

getting 9.7%, the Public Prosecutor's office trusted by 4.3% and the traditional militsiya left with 3.9%[5].

2. Preventing Corruption In Ukraine

The overwhelming majority of people have their own view on the situation in various sectors whether they personally have contact with those sectors or not because their perception is formed not only by their own experience but also based on the information spread by the media or people's family or friends. Thus, even with no factual proof, such information largely forms people's perception of how serious the corruption issue is and how effectively the government addresses it.

Over the years of our research, there have been stable trends in the structure of corruption-related information sources Ukrainians use. Similarly to our earlier findings, the leading supplier of information about corruption is mass media with traditional broadcast media leading in the sector – up to 30% of respondents receive information about corruption from television and radio. Another major source of such information is still informal communication – about one quarter of respondents (23.8%) learn about cases of bribery from their family or friends. Print media continue losing their impact – their audience comprising a quarter (25.2%) of the population in 2007 decreased to one fifth (21.6%) in 2014 and then to one sixth (16.0%) in 2018[6].

The only source of information about corruptors' activity that has significantly gained audience over the period of our research is the Internet. Though the proportion of Ukrainians learning about corruption encounters from the worldwide web had been growing before, it has nearly tripled since 2014 increasing from 4.4% to 12.4% (of which 7.2% are readers of news sites and blogs and the remaining 5.2% are users of social networks like Vkontakte, Facebook, Twitter etc.). Predictably, different media have different user structures. Thus, print media are mostly supported by older readers, while younger people tend to rely on the Internet.

Government representatives are failing to win more attention with speeches devoted directly to the problem of corruption. Their audience

[5] NACP official statement about results of its activity as of December 2016. Available in Ukrainian at: http://nazk. gov.ua/news/nazk-u-mizhnarodnyy-den-borotby-z-korupciyeyu-i-shchodnya-nacionalne-agentstvo-na-varti.

[6] OECD Report "Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018", p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

does not exceed 8% of adults. People's views on the leading causes of corruption have proved to be stable over the years. It is difficult to single out one deciding factor leading to corruption in Ukraine. Most often, rated as leading in corruption development was officials' desire to use public office for personal gain (19.7%). There they are helped by the top governing officials of the country unwilling to address corruption (12.9%) and people themselves being used to solving their problems in such a way (11.8%).

Insufficient inner control in the bodies of power was noted by 11.7% of respondents and about 10% believe that corruption is caused by too complicated and imperfect legislation of Ukraine. The rest of the listed causes were named by less than 9% of respondents.

One half (49.8%) of adult Ukrainians admit that they may get involved in corrupt actions for their own gain, that is when it helps them solve their own problem. The proportion of those declaring that corruption practice is totally unacceptable for them equals 37.4% of respondents[7].

Let us take a closer look at the portraits of these two population groups. The tendency to reject corruption even in one's own interest strengthens with age. Women are relatively more tolerant to corruption – the biggest difference between males and females is seen in the oldest age group (aged 60 and older). In this group, corruption is seen as unacceptable by 42.4% of men and 38.1% of women. Graph 3.4 shows that, similarly to the preceding years, young people tend to make use of corruption contacts for their gain more often.

Corruption is more often justified by those who encounter it most frequently: 55.8% of this year's bribers admit the use of corruption, while among those who have not had such experience over the past year there are 45.3% of such people. Urban residents are more tolerant to corruption relations (51.3% compared to 46.9% of villagers), perhaps, due to wider possibilities of their use.

We also offered our respondents a series of questions helping describe their value orientations. The most supported by the whole population was the statement about the need to fire corrupt officials from public offices – 94.3% of respondents agree with it. It is worth noting that within different socio-demographic groups men are significantly more

[7] NACP official statement about results of its activity as of December 2016. Available in Ukrainian at: http://nazk. gov.ua/news/nazk-u-mizhnarodnyy-den-borotby-z-korupciyeyu-i-shchodnya-nacionalne-agentstvo-na-varti.

ready for active resistance to corruption. Thus, more men are ready to report corruption encounters that they learn about (48.0% compared to 43.5% of women), and more men are prepared to join collective protests against local corruptors (47.8% compared to 42.1% of women). Similar differences are also seen within age groups: the oldest people are considerably less ready to act as mentioned above. Besides, they are less prone to believe that most people in Ukraine will use corruption contacts when they get a chance[8].

Let us also consider the abovementioned factors in terms of tolerating corruption. There are several questions that separate people who tolerate corruption practices from those who do not. Thus, among of people who tend to justify corruption, there are more people believing that most Ukrainians will use corruption contacts if they get a chance. Secondly, they more often believe that one cannot get proper services without extra payment in Ukraine. Thirdly, they tend to explain their tolerance to corruption by striving for "equality" among public officers and simple people: if the former may break the law, it should not be demanded that the latter observe it either.

In contrast, the ones who are strongly against corruption even for their own gain agree more often than others that responsibility for corrupt actions should be equal for both parties of the deal. They also declare better willingness to uncover corruption actions.

Having compared the response to the last of the questions we mentioned with the actual practice of reporting corruption encounters, we can see that overall only 1.8% of the whole population filed a complaint about corruption, while there are 1.5 times more appellants (2.7%) among those declaring their readiness to complain.

The study of 2018 helps evaluate the general perception of how corrupt the society is because some factors and spheres of life may not be equally important for different people and thus will have different influence on their perception of the situation as a whole. The survey shows that 85.5% of adult Ukrainians estimate the spread of corruption in the society as above average. Only 1.8% of respondents believe that corruption is little spread or that there is none at all.

In every research wave, we asked our respondents to evaluate their subjective perception of how corruption spread in Ukraine had changed

[8] OECD Report "Anti-Corruption Reform in Eastern Europe and Central Asia. Progress and Challenges, 2014-2018", p.17. Available in English at: www.oecd.org/corruption/acn-ENG.pdf.

over the two years preceding the survey. Of course, analyzing their response we cannot claim that it indicates the efficiency of the government's anti-corruption programs – especially considering the circumstances around the changes in power in the recent period. But we can observe a certain tendency in this perception.

Besides, in our earlier studies we noticed that there was a reverse relation between the trust in authorities and perception of corruption in the society and that such perception depended on respondents' political preferences. Our current research also backs this finding: supporters of the political powers that are currently in office (Petro Poroshenko Bloc, The People's Front) tend to see a positive change in corruption levels more often and note its increase less frequently. At the same time, opposition supporters (The Opposition Bloc, the left-wing powers in opposition) note increasing corruption more often and do not see any decrease in it. Between them is the electorate of other political parties including other participants of the current parliamentary coalition[9].

3. Anti-corruption policy and instituonal framework

The first comprehensive anti-corruption policy document, the Anti–Corruption Strategy for 2014-2017, was adopted by the Ukrainian parliament in October 2014, and its provisions were later included in the Coalition Agreement and Cabinet of Ministers' special governmental program. The Strategy covers all key policy areas: preventing corruption in the public sector, state-owned enterprises, public procurement, judiciary, private sector; establishing an effective law enforcement system; reforming the civil service; cultivating zero tolerance towards corruption; and increasing transparency and openness of decision making. However, though the Strategy is a step forward in anti-corruption policy development, it lacks clear performance indicators and necessary links and coordination with other reforms to be conducted (in healthcare, decentralization, military, and administrative services). Its narrow focus on anti-corruption institutions and instruments may weaken the important role these reforms should play in uprooting preconditions for corrupt behavior in all sectors of economic, social and political life.

[9] Civil society statement. Available in English at: http://www.transparency.org/news/pressrelease/ukraine_must_certify_e_declaration_anti_corruption_tool_to_make_it_effectiv.

The Strategy and 2014 anti-corruption package of laws envisioned the establishment of several new anti-corruption bodies. For the first time, their senior management was to be selected through an open competition by independent selection panels including CSO representatives and trusted international experts. In some cases, this procedure was also to be used for recruiting regular personnel. Civic oversight councils would be set up to monitor and evaluate their performance.

However, the launch of new bodies ran into significant obstacles – competitions were delayed by unjustifiably late governmental decisions, selection panels sometimes included false CSO representatives, and there have been numerous attempts to influence the selection process in favor of politically dependent candidates. Moreover, following the selection of senior management, the government failed to provide new institutions with necessary premises, equipment and funding to undermine their activity. To overcome these obstacles, civil society and international partners became involved, using all instruments at their disposal – from official statements to street protests.

Anti-corruption policy development and corruption prevention. The institutions in charge of anti-corruption policy development include the National Agency for Corruption Prevention (NACP), the Committee on Corruption Prevention and Counteraction of the Verkhovna Rada of Ukraine, and the National Council of Anti-Corruption Policy under the President of Ukraine[10].

While the subject Committee of the Verkhovna Rada of Ukraine continues to play an important role in developing anti-corruption policies together with a new consultative and advisory body – the National Council on the Anti-Corruption Policy – established as a platform for high-level stakeholders to discuss the results of imposed anti-corruption changes, the leading role in shaping anti-corruption policy was given to the National Agency for Corruption Prevention.

This Agency is in charge of: policy development, monitoring and evaluation; holding anti-corruption expertise of draft laws and by-laws; administration of online registry and verification of public servants' asset declarations and their lifestyles; oversight of conflict of interest; control over finances of political parties; whistleblower protection, etc. The

[10] See NACP official statement about results of its activity as of November 2018.

Agency is also in charge of preparing the Annual National Report on Implementation of Anti-Corruption Policy.

It is subordinated to the Cabinet of Ministers of Ukraine; its five members are appointed by a Cabinet decree and are elected for four-year terms by a selection panel that includes representatives of different public institutions and civil society. The Agency has its own secretariat and has the right to set up territorial branches. The Law "On Corruption Prevention" stipulates a number of measures to guarantee the NACP's independence and impartiality[11].

However, when it came to implementation, the election of the NACP members was significantly delayed by the government's unwillingness to have an independent selection panel. In 2015 the Cabinet attempted to stage the election of civil society representatives who would join the selection panel. In January 2016 civil society panel members appealed to the administrative court against appointment of the NACP member, who, they argued, was elected despite a conflict of interest. However the court rejected their claims in December 2016[12].

The four members were officially appointed and the Agency was launched in March 2016; by August it claimed to be fully functiona. However, as of December only 70% of necessary staff was recruited, the Public Council under the NACP was not elected, and cooperation with other governmental bodies was at initial stages. The work of the selection panel to elect the fifth Agency member stalled.

Moreover, the NACP was heavily criticized by the EU Delegation to Ukraine, the IMF, the UNDP and civil society for not performing their functions properly, specifically for nearly failing to launch the web-portal of public servants' asset declarations. All high-level public servants and senior local self-government officials were obliged to submit a new electronic form of asset declarations by October 30, 2016. The form provides an expanded access to information about officials' and their family members' revenues, expenditures, movable and immovable property, savings, and cash reserves.

According to NACP statistics, as of December 2016 the web-portal contained 107,972 asset declarations for 2015, 1,467 officials' reports

[11] See NACP official statement about results of its activity as of December 2018.

[12] Monitoring Report by the Center of Policy and Legal Reform, December 2018. Available in Ukrainian at: http:// pravo.org.ua/img/zstored/files/FD(2). pdf.

about significant changes in their financial and property status, and 1,436 annual declarations of candidates for public positions[13].

It was evident that the NACP was under political pressure to postpone the launch of asset e-declarations.

When the web-portal was ultimately launched, the NACP delayed adopting by-laws needed to verify the accuracy of declarations, and as an outcome, this work began only two months after the declarations were submitted.

Another important task the NACP is charged with is controlling party finances. Almost complete control over political parties by oligarchs and business interests has been another long-standing feature of Ukrainian politics. Political parties were often registered as legal entities with the purpose of 'selling' them before parliamentary or local elections – this is the main reason for such a high number of registered parties.

Under pressure from civil society and international organizations the Ukrainian parliament introduced limitations on financing political parties, provided transparency requirements towards their revenue sources and envisaged parties' financing from the state budget. Specifically, the legislation obliges all political parties to receive all contributions only in non-cash form through special bank accounts; the size of contributions is regulated; contributors must be identified; all parties must submit their quarterly financial reports to NACP; reports must be published; administrative and criminal liability is introduced for violating key requirements. It is also stipulated that political parties that received more than 5% of votes during the 2014 parliamentary elections will have the right to apply for state financing. It will include parties that reach a 2% threshold in the next elections.

The law on party finances was enacted on July 1, 2016. The NACP decided to release the first tranche to all political parties with factions in the parliament by the end of 2016, excepting "Opposition Block" which did not apply for state financing. Five parliamentary political parties already received almost 6 million Euros.

However, the NACP itself failed to use its powers to hold parties' leaders and accountants liable for violating legislative requirements – it submitted administrative protocols for five individuals, citing untimely

[13] See NACP official statement about results of its activity as of November 2018.

submission of financial reports, whereas independent civic monitors suggested that there should have been over 200 administrative protocols[14].

In addition, the 2014 anti-corruption legislative package introduced a more advanced system of incentives and guarantees for whistleblowers. It is possible to report corruption anonymously (information about whistleblowers can be disclosed only in limited cases). If there is a threat to the life, property or housing of whistleblowers or their families, the state must undertake necessary measures to protect them. Whistleblowers cannot be fired or forced to leave their current jobs or brought to disciplinary responsibility for their anti-corruption activity. The NACP can act on the behalf of the whistleblower if he or she initiates an administrative or civilian lawsuit against their senior manager/employer for violating their rights.

However, presently there is no information about cases of NACP's support of whistleblowers. Further guarantees and incentives for whistleblowers' activity are stipulated in the special draft law currently promoted by civic activists and reform-minded MPs and public officials.

4. Anti-corruption law enforcement

The system of anti-corruption law enforcement and prosecution bodies will also be radically changed when all legislative initiatives are fully implemented. It will include the National Anti-Corruption Bureau (NABU), the Specialized Anti-Corruption Prosecutor's Office (SAP), the National Police of Ukraine, the State Bureau of Investigations (SBI) and prosecutor's office. A National Agency for Detection, Investigation and Management of Assets Derived from Corruption and Other Crimes will be set up to identify, recover and manage confiscated assets.

Currently, there are two bodies in charge of fighting high-profile corruption – the NABU and the SAP. The NABU is an entirely new anti-corruption law enforcement body created within the 2014 Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine", which aims to investigate large-scale bribes, embezzlement, and corruption crimes committed by high-level public servants, judges, MPs, managers of large state-owned companies, and foreign officials.

[14] Monitoring Report by the Center of Policy and Legal Reform, December 2018. Available in Ukrainian at: http:// pravo.org.ua/img/zstored/files/FD(2). pdf.

The legislation provides unprecedented independence to the Bureau, its leadership and personnel: the Director of the Bureau is chosen by the President of Ukraine from two candidates elected by the selection panel, that includes representatives of civil society, academia, media, foreign experts, etc.; the Bureau personnel are recruited through an open competition with involvement of civil society representatives; and the personnel are guaranteed high salaries by the law. The Public Council under the NABU is entitled to monitor and evaluate its activity. The Director must submit public reports about NABU's activity biannually.

The President of Ukraine appointed Artem Sytnyk as the Director of the NABU in April 2015. By December 2016 almost 80% of NABU personnel were recruited, and a number of regional offices are expected to be fully launched by the end of 2016. Access to more than one hundred state registries and databases was already provided to Bureau detectives and analysts. Cooperation agreements were concluded with respective institutions in a number of foreign countries[15].

Setting up the Specialized Anti-Corruption Prosecutor's Office was an important measure to secure NABU's independence. The SAP is empowered to supervise NABU's activity and support court cases. Although the head of the SAP holds the position of Deputy Prosecutor General, its leadership and key personnel were recruited through an open competition conducted by an independent panel consisting of representatives of civil society and trusted foreign experts. Nazar Kholodnytsky was appointed as the head of the SAP in December 2015, and all administrative positions were filled in the same month.

Consequently, the NABU was able to launch its first investigation only in December 2015, following the establishment of the SAP, and its first case was submitted to the court in February 2016. One year after launching their investigative work, NABU detectives conducted over 250 criminal investigations, submitting 41 cases to court and obtaining nine convictions (however, five of them resulted in a plea bargain). An equivalent of nearly 4 million euros was returned to state-owned companies, and NABU prevented embezzlement of almost 22 million

[15] The Report of NABU Director about NABU activity from 2016-2018. Available in English at: https:// nabu.gov.ua/sites/default/files/reports/ report_februaryaugust.pdf.

euros. The damage caused by the investigated corrupt actions was estimated at 3 billion euros[16].

A number of Members of Parliament were under investigation by NABU detectives. One of them, Oleksandr Onyshchenko, fled to the UK after the Bureau accused him of plotting a nationwide "gas corruption scheme". The scheme allegedly resulted in the embezzlement of up to 100 million Euros[17].

Immediately after its launch the work of the NABU faced fierce resistance from MPs, the Prosecutor General's Office (PGO) and other law enforcement bodies. NABU detectives were unlawfully detained by PGO armed personnel when conducting undercover surveillance of a suspected prosecutor. PGO officials who were involved in the clash did not face any serious sanctions from the Prosecutor General. Moreover, a number of draft laws were submitted to the Parliament, aiming to limit NABU's investigative capacity and to allow the Prosecutor General to interfere in NABU's investigations.

These actions indicate that political elites are not yet ready to comply with independent investigation of high-profile corruption and struggle to preserve influence on anti-corruption law-enforcement. The PGO acts as the leading institution trying to thwart the efforts of newly established institutions.

The experience of the NABU and the SAP suggests the need for further legislative amendments to increase their independence and effectiveness. Currently, the NABU has to submit a request to the State Security Service of Ukraine to install wiretapping. This undermines NABU's independence and risks information leakages in high-profile anti-corruption investigations. The initiative to give the NABU an autonomous right to wiretap was a condition of Ukraine-IMF Memorandum signed in September, 2016[18] and was openly supported by the EU[19]. Despite this, as of December 2016, the relevant draft law was not adopted by the Parliament.

[16] NABU official statement on results of its activity as of December 2016. Available in English at: https://nabu. gov.ua/en/novyny/first-year-nabus-investigations-580-million-uah-embezzlement-prevented-100-million-uah.

[17] NABU press release. Available in Ukrainian at: https://nabu.gov.ua/ novyny/pislya-likvidaciyi-gazovoyi-shemy-zusyllyamy-nabu-prybutky-ukrgazvydobuvannya-suttyevo-zrosly.

[18] Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, September 01, 2016. Available in English at: http://www.imf. org/external/np/loi/2016/ukr/090116. pdf.

[19] Remarks by the European Commissioner for European Neighborhood Policy and Enlargement Negotiations, Johannes Hahn, on the occasion of meeting with Ukrainian anti-corruption institutions at the

The NABU faces another urgent issue when submitting cases for court consideration. The unreformed Ukrainian court system suffers from its inability to make unbiased decisions in any corruption-related cases.

Transparency International Ukraine revealed that only 20% of those accused of extortion or bribe collection were imprisoned by court decisions[20]. Every tenth person was acquitted while the rest received probation or were fined[21]. According to a journalist anti-corruption project "NashiGroshi", not a single senior official was imprisoned for corruption related offenses in 2015-2016[22].

As of December 2016, most of the 41 cases filed by NABU have not yet undergone the first court hearing. At the same time, courts use legal opportunities to block NABU's work by refusing to issue investigative warrants, leaking information regarding NABU's evidence-collecting activities, releasing NABU's suspects on low bails or refusing to remove them from governmental posts.

Although the newly adopted framework law on judiciary envisages establishing the High Anti-Corruption Court, the relevant legislation to implement this provision has yet to be submitted to the Parliament.

Other types of corruption are to be investigated by the State Bureau of Investigations and the National Police under the supervision of the prosecutor's office. The process of establishing or reforming these institutions is less encouraging compared with the NABU and the SAP.

The State Bureau of Investigations is supposed to investigate serious crimes, including corruption, by high-level officials and personnel of the law enforcement bodies (except those under NABU jurisdiction), crimes committed by the staff of the NABU and the SAP, and military crimes. SBI establishment was stipulated by the respective law adopted in December 2015. The bureau's head has to be chosen by a selection panel and appointed by the President of Ukraine[23].

However, as of December 2016 the head of the SBI was not yet selected. Civil society and international organizations criticized the

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Verkhovna Rada in Kyiv, September 16, 2016. Available in English at: https:// ec.europa.eu/commission/2014-2019/hahn/announcements/remarks-johannes-hahn-occasion-meeting-ukrainian-anti-corruption-institutions-verkhovna-rada-kyiv_en.

[20] Statistic is based on data from March 2014 to February 2018.

[21] TI Ukraine study results. Available in Ukrainian at: http://ti-ukraine.org/en/ news/oficial/5948.html.

[22] Results of Nashi Groshi monitoring. Available in Ukrainian at: http:// nashigroshi.org/2016/08/31/zi-vsih-vip-chynovnykiv-za-mynulyj-rik-v-ukrajini-sily-v-tyurmu-lyshe-troje-slidchyh-i-holova-silrady.

[23] Latest statistics on the governmental open data web-portal are available in Ukrainian at: http:// data.gov.ua/.

selection process for its unclear criteria for selecting panel members, inclusion of MPs into the panel, its closed and non-transparent work, and potential political influence on the panel's decision. The final decision is expected to be taken in February 2017.

The delay in setting up the SBI seriously undermines the effectiveness and credibility of the new anti-corruption institutional infrastructure. It leaves law enforcement and army personnel, including the NABU, without due oversight since the PGO, currently empowered to oversee and investigate their activities, is itself in need of a radical reform.

The National Police of Ukraine is supposed to investigate minor corruption crimes (petty bribery beyond the jurisdiction of the NABU and the SBI) and corruption-related administrative offenses. The comprehensive reform of the Ministry of Internal Affairs including the creation of the National Police is still underway.

Although there are reasons to believe that the new patrol police will be corruption free, there are serious concerns that further reform of the National Police will stall. The Interior Minister Arsen Avakov is blamed for failing to dismiss officers who participated in repressions against Euromaidan activists. He was also rightfully accused of protecting some senior officials presumably involved in corruption schemes. Current open competitions for a number of senior posts largely fail to attract professionals with high integrity standards[24].

It is expected that prosecution bodies will supervise pre-trial anti-corruption investigations conducted by the SBI and the police and will support the accusations in court. The Prosecutor General's Office of Ukraine is widely perceived as one of the main obstacles to the successful implementation of the anti-corruption reform. The transitional provisions of the 1996 Constitution stipulated that the post– Soviet prosecution system should have been brought in line with the EU standards. The investigative and oversight functions should have been clearly separated and the PGO should have mainly focused on overseeing pre-trial investigations and supporting accusations in courts.

It was not until Euromaidan that the reform was launched. However, an attempt to bring "new blood" into the PGO failed. As an outcome of a large scale recruitment campaign at the local level, only 3% of new people outside the system were appointed to administrative positions. Attempts to

[24] 2018 Open Government Awards. Available in English at: www. opengovawards.org/2018Results.

reboot the PGO at the central level also failed and reform-oriented Deputies of the General Prosecutor David Sakvarelidze and Vitalii Kasko were removed.

Current General Prosecutor Yuriy Lutsenko already proposed that some reform initiatives should be reversed – he stated that the so-called "general oversight functions" should be given back to the PGO. This function was widely used by the prosecutors to extort bribes from businesses and citizens. Moreover, one MP recently submitted a draft law giving the PGO the right to decide what institution should investigate each high-profile corruption case. The draft law was clearly aimed at undermining NABU's independence[25].

It is worth noting separately that the PGO failed to properly investigate corruption crimes presumably committed by high-level politicians and senior public servants under Viktor Yanukovych regime – not a single corruption accusation was submitted to the court.

CONCLUSIONS

During 2016-2018 Ukraine has greatly progressed in its fight against corruption: a new institutional framework was established and anti-corruption instruments were launched. However, as anti-corruption reform enters its decisive stage – enabling anti-corruption institutions' work and sentencing corrupt officials – it meets growing resistance from old political and business elites.

The most widely recognized achievements are providing open access to public information and involving civic activists in governmental decision-making. The success of establishing new anti-corruption institutions is mixed, with some of them almost fully operational and independent, and others falling prey to political pressure. The General Prosecutor's Office appears to be the main institutional stronghold of those trying to thwart post-Euromaidan anti-corruption fight. Their resistance culminated in a fight over the introduction of the new public servants' electronic asset declaration system.

The newly created National Agency for Corruption Prevention shows disturbing vulnerability to political influence. It has been unable to effectively monitor public officials' integrity and lifestyles and political parties' compliance with new requirements for their financial

[25] Evaluation figures by CSO "Eidos". Available in Ukrainian at: http:// eidos.org.ua/novyny/chy-zapustyat-parlamentari-povnotsinnu-robotu-portalu-e-data/.

transparency. Therefore, NACP's further activity should be closely monitored by civil society and international organizations.

Being almost fully functional, the NABU and the SAP demonstrate first encouraging results of anti-corruption investigations, despite growing resistance from the GPO and sabotage from courts.

The development of the SBI was stalled at the stage of selecting its head.

In order to ensure smooth implementation of anti-corruption policy, additional legislative measures are needed. It is crucial that CSOs, pro-reform politicians and officials, and international organizations focus their efforts on the implementation of anti-corruption reforms. The EU, and other international partners, should make their assistance to Ukraine strictly conditional on the reform's effectiveness.

SUMMARY

Starting in 2014, Ukraine has undertaken significant reforms to address corruption in public life. So far, there has been greater success in restricting the opportunities for corruption than in bringing corrupt officials to justice. Corruption is a symptom of the poor system of governance in the country, not the cause of it. A decisive breakthrough will require opening the political system to more actors, creating greater competition and developing credible institutions to support the rule of law. Anti-corruption successes include the cleaning up of Naftogaz and reforms in administrative services, banking, the patrol police, procurement and taxation. Decentralization is also creating new opportunities for citizens to hold local authorities accountable for managing local public resources.

Progress is lacking in priority areas such as customs, deregulation, privatization, demonopolization and the reform of public administration. Defence spending is particularly opaque. Corruption schemes remain untouched in some parts of the energy sector. An overhaul of the civil service is also essential. Reforms of the law enforcement agencies are proceeding slowly, if at all. It is too early to say whether judicial reform will lead to improvements in the functioning of the courts because of the deep underlying culture of corruption in the judicial system. The newly created National Anti-Corruption Bureau has yet to achieve a high-level prosecution because of the influence of vested interests over the judiciary.

This situation should change for the better after the formation of the High Anti-Corruption Court, but there is likely to be a risk of selective justice.

Punitive measures on their own can only have a limited effect on reducing corruption. They must be part of a sustained and comprehensive strategy to reduce the space for corrupt practices and open the political and economic system to greater competition. This requires demonopolizing politics, and encouraging Ukraine's power groups to accept new rules of the game. Citizens condemn high-level corruption but regard petty corruption as a justifiable evil. This perception needs to change, and citizens must accept their responsibilities for limiting the scope of corruption. The material used in the study has only the analysis of information resources.

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FINANCING POLITICAL PARTIES IN THE WORLD AS A FACTOR OF MINIMIZING CORRUPTION

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INTRODUCTION

In the whole world it is a well-known fact proved by scientists that corruption can accompany the process of financing political parties. This is exactly why the problem of financing elections campaigns is relevant not only in Ukraine, but also in the political life of all developed countries.

According to the National agency of preventing corruption, the amount for the state funding of parties in Ukraine in 2018 was 513 million 671 thousand UAH.[1] At the same time, the results of the public survey conducted by the «Democratic initiatives» Foundation and the Ukrainian Center for Economic and Political studies named after Oleksandr Razumkov show that Ukrainians are not ready to finance political parties at the expense of the state's budget. Thus, 76% of Ukrainians do not support the idea of financing political parties from the State Budget and 40% of Ukrainians believe that financing the parties is the task of the party's leaders and party members. Only 13% of Ukrainians believe that political parties should be financed by the state, and 14% believe that businessmen should finance them. The Director of the «Democratic Initiatives» Foundation named after Ilko Kucheriv and I. Bekeshkina notes that society has a low-level of trust towards parties because they defend the interest of financial-economic leaders instead of defending the interest of people. This means that the same oligarch must finance his own party[2]. As usual, businessmen, who invest in political parties, expect to gain profit from them. In Ukraine this business could earn profit due to assignment of its protégés to the top positions in the Cabinet of Ministers of Ukraine, The Security service of Ukraine, the General Prosecutor's

[1] НАЗК: 513 млн 671 тис. гривень отримають 6 політичних партій на фінансування статутної діяльності на 2018 рік. URL: https://nazk.gov.ua/news/nazk-513-mln-671-tys-gryven-otrymayut-6-politychnyh-partiy-na-finansuvannya-statutnoyi.

[2] Публичные дебаты. Финансирование политических партий: как избавиться от влияния олигархов. URL: https://www.ukrinform.ru/rubric-presshall/1933013-publichnyie-debatyi-finansirovanie-politicheskih-partiy-kak-izbavitsya-ot-vliyaniya-oligarhov-zal-1.html.

Office of Ukraine and the Ministry of Internal Affairs of Ukraine, judicial agencies, etc. that are used in illegal ways. However, does the tendency when «big businesses» finance political parties have any negative effect?

1. The Use of Large Business-Groups and Oligarch's Funds to Maintain Political Parties

In general, the problem of financing political parties should not be considered only in the form of state funding, but also in the form of using the funds from large business groups and oligarchs for maintaining political parties. The state funding that does not belong to any of the government's branches is redistributed within the state's budget and is provided in a transparent way. This practice was used for the first time in Germany and spread to other European Union countries in order to grant independence to parties from the authorities, big businesses and oligarchs, who have the resources to finance politics. Often parties can not refuse these resources because they do not know how to get them from citizens like it is done in the USA, where any pre-election campaign starts with fundraising, as well as for election's agitation[3].

The ability to finance political parties by big businesses is a specialty of the USA politic system functioning. A good example of this is a list in Forbes, which revealed the main sponsors of B. Obama and M. Romney in the USA pre-election presidential campaign. This information is also available in free access on the Internet[4]. Thus, Hollywood producer S. Spielberg, who is in the Forbes list of 400 richest Americans, has supported B. Obama by donating him 100 000 dollars through Priorities USA Action – an independent organization which was created to raise funds for the presidential election. Brothers multimillionaires Charles and David Koch, the founders of the ultraconservative «Tea Party Movement», were raising funds for M. Romney's campaign and were planning to raise 400 million dollars. Both Charles and David Koch have contributed to this campaign themselves by donating 40 and 20 million dollars. A well-known investor W. Buffett (number 2 in the Forbes list) donated a maximum of 38 500 dollars to the official re-election campaign of B. Obama and he did not operate through the Priorities USA Action

[3] Кривцун Д. Чи реальне державне фінансування партій? URL: https://day.kyiv.ua/uk/article/podrobyci/chy-realne-derzhavne-finansuvannya-partiy.

[4] А як у них? Фінансування виборчих кампаній політичних партій. URL: https://rada.oporaua.org/analityka/a-iak-u-nykh/14030-a-iak-u-nykh-finansuvannia-vyborchykh-kampanii-politychnykh-partii.

organization which was created to support the president. S. Adelson, who is a billionaire and the head of the Las Vegas Sands Empire of casinos, is one of M. Romney's main donator, he and his wife has donated at least 35 million dollars to support of M. Romney. Millionaire P. Pritzker, who is the owner of Hyatt hotels, has been the head of B. Obama's support campaign and has raised more than 100 000 dollars for his le-electing campaign. G. Soros had been supporting Obama since 2004, when he stood for the Illinois election campaign and donated 175 000 to him. An Israeli-American media magnate H. Saban donated 1 million dollars through the Priorities USA Action organization to support B. Obama. The Manager of New York Hedge Foundation Elliot Management P. Singer raised 5 million dollars to support M. Romney and sponsored his campaign by donating 1 million dollars. The financial market legend D. Robertson, the founder of the investment company Tiger Management Corp supported M. Romney by donating 1.3 million dollars.

In the United States of America, it is not only the election headquarters that can start supporting campaigns of a particular candidate, but party organizations and the political action committees (PACs) could also agitate for them. Such committees can conduct an independent political agitation from the candidate, they do not report about their funds, and they can be sponsored by big businesses. PACs gained full autonomy after McCain-Feingold's law about the restriction of the corporation's rights during the pre-election period was considered non-constitutional, and the Judges of the Supreme Court came to the conclusion that the prohibition to finance the political parties' propaganda was a direct violation of the liberty of speech. The so-called case of Citizens United in accordance with the appeal of the PACs caused a huge stream of donations from the big business. This money went to both traditional PACS and the super PACs; it also went to non-governmental organizations, which do not need to report about the donations that they get. The Appeal Court of USA refused to cancel the decision of the federal judge, which obliges non-governmental financial organizations, which use the preferential tax regime but still continue to conduct political agitation live on TV to disclose the sources of their financing. F. Wertheimer, the chairman of the liberal group «Democracy-21» has called this the first major breakthrough in the fight against large-scaled secret inflows, which have filled the federal elections.

Those who defend the rights of non-commercial organization to hide their sources of income, still have the argument about violating the liberty of speech. It is also noted that those who donate money could face various problems if their generosity is revealed to their political opponents who are currently in power. At the same time, the Supreme Court always defends the transparent policy, which requires the political life participants to disclose the sources of their income, just like in the «Citizen United case»[5].

Large corporations do not limit themselves to financing only one candidate. Their lobbyists work with both republicans and democrats because the big business wants to have an influence on the politics regardless of who is currently in power. For example, businessman G. Soros has donated 6 million dollars to Hillary Clinton's super committee. Super-committee democrats criticize such actions, but they do not refuse to take the donations during their election campaigns. For example, the USA Priorities Action Foundation which was given to H. Clinton as an inheritance from the ex-president collected more than 100 million dollars in at that time. H. Clinton explains that refusing the help of super-committees means giving the republicans more financial opportunities. She also promised that if she would win the presidential election and take the president's position, she would appoint such judges to the court that would cancel the decision about super-committees. On the other hand, she and D. Trump both had a couple of foundations that were independently raising and spending large amounts of money "for" or "against" these two candidates.

All donations to super-committees are recorded by the Federal Election Commission; the anonymity of money provision is excluded. But there is a loophole; the 501 organizations are non-commercial institutions that have the rights to spend half of the raised funds on politics, while not revealing who their donators are. Therefore, sponsors use this method to support a political candidate while not revealing their participation in a political process[6].

The activities of political parties do not exhaust the entire specter of forces and organizations that operate on the political arena. The

[5] Кто финансирует предвыборную кампанию Барака Обамы. URL: https://delo.ua/world/kto-finansiruet-predvybornuju-kampaniju-baraka-obamy-177904/.

[6] 6. Дорогі політики: хто і як фінансує вибори в США. URL: http://ukr.segodnya.ua/economics/enews/dorogie-politiki-kto-i-kak-finansiruet-vybory-v-ssha-741490.html.

representatives of the entrepreneur circle organize various associations of entrepreneurs to protect their economical and political interests. Nowadays, the constitutions and the legislations of foreign states are regulating various aspects entrepreneurial activity and consolidating the status of business organizations, unions and associations.

The first entrepreneur organization was founded in the United States in 1895. Now they are founded at local, regional and national levels in a form of commercial and industry chambers, associations of employers, branch associations and the national industrial unions, wholesale trading and banking. A good example of this is the Confederation of British Industry, The National Council of French Entrepreneurs, and The Federal Association of national employer unions, The US Business Roundtable, which brings together the representatives of the US financial circles and etc.

Entrepreneurial organization are powerful and influential associations, which have offices with a large number of economists, lawyers, sociologists, psychologists in the field of business, marketing and etc., their apparatus is much bigger than the political parties' staff. The main directions of the entrepreneur association (organizations, chambers and unions) work are: a) the agreement about the economic politics of organizations and the field of economics in general b) the influence on the relations between wage laborers and entrepreneurs through the development of a certain policy about paying for labor, through solving the problem of unemployment, and the redistribution and retraining of workers, etc. c) the initiation of TNC creation;

d) the influence on the legislation process, preparation and the acceptance of the budget, tax and customs policy; e) the development of personnel policy for the state apparatus, political parties and trade unions; e) the financing of political parties; f) the financing of ideological theories, which are the basis of party programs and election platforms, etc.

By supporting certain political parties, entrepreneurial structures act as so-called curators; follow their activities and political courses. In conclusion, political parties openly follow entrepreneurial organizations recommendation. Unlike political parties whose social composition is heterogeneous, entrepreneurial organizations are specific, closed unions of big entrepreneurs, which are created on a non-party basis. It is them who decide which political party should be financed or supported. Thus, political parties are indirect organizers of entrepreneurial circles, and

entrepreneurial organizations are the direct organizers. If political parties intensify their activities in the conditions of preparing and conducting election campaigns, then entrepreneurial organizations are constantly working in intense conditions. The spectrum of problems and interests solved by them is extremely huge.

Speaking about ways of entrepreneurs' influence on the state policy, we should mention their direct involvement in the work of the electing agencies as well as the use of services of various lobbying organizations and individual lobbyists[7].

Although there was a tendency to reduce the financing of parties by businesses in Germany, such practice still remains. There are the following unities among the supporters of the Christian-Democratic Union of Germany (CDU) – the Union of Chemical Industry and the Daimler Automobile concern, which donated 100 thousand Euros each in July of 2013. The Berenberg Bank and three unnamed individuals also contributed by donating significant amounts. Traditionally, Daimler shares money equally between the biggest political parties of Germany. In 2013, before the elections the Social-Democratic Party of Germany (SDPN) also received 100 thousand Euros from the giant of the automobile business. BMW's concern also makes financial investments in different political parties. Their political preferences are quite obvious: the Christian-Social union got 144 thousand Euros, the social-democrats got 107 thousand, and 70 thousand went to the Free Democratic party of Germany (VDPN). Following the CDU about donation amounts are social-democrats, who got 287 thousand Euros at the start of the year. Except auto giants like BMW and Daimler, there was another one big sponsor, whose name is not revealed. FDPG received 129 thousand Euros. The party was supported by the union of Metal-processing and electro-industrialization of earth North Rhine-Westphalia and BMW.

However, in the recent years, according to Spiegel Online, the amounts of donations from big business are constantly decreasing. For example, in 2012 big companies donated 1.3 million Euros, which is three times less than in 2011. In 2010 German political parties received almost four million Euros, and in 2009, which was the election year they received almost six million Euros. However, experts speak about the «drying of the sponsors' stream» of political German parties. According to Spiegel

[7] Конституційне право зарубіжних країн. URL: http://alldok.ru/book_536_page_29.

Online, the sponsorship crisis happened due to the range of scandals in the recent years. Nowadays, the society is much more critical to the financial support of politics after president C. Wulff retired from his presidential position in 2012 because he obtained certain privileges from the businessman. Maybe the «Mövenpick scandal» had even a bigger impact on sponsoring. In 2009, which was the election year, the Free Democratic Party received donations in the amount of one million Euros from the hotel network Mövenpick. This became an informational bomb of slow-moving action: democrats acknowledged of this donation when they already achieved the reduction of taxes added to the value of hotel business. Soon after the FDP became known as the «hotel» party and gained the undisguised interest of lobbyist from lots of separate business-interest[8].

According to the executive director of the «Transparency of Georgia» E. Gigauri in 2012 (except for August and September) 6 political parties in Georgia included in the election coalition «Georgian dream» received a total of 4 607 000, the Unified National Movement – 13 million 43400, the Christian-Democratic movement has received 961 00 and the Labor Party has received 337 000 lari. The biggest source of income for the political parties is the state's funding and donations. In 2012, donations to the political parties were only provided by individuals, because it was illegal to receive donations from legal entities. E. Gigauri has mentioned that "Nevertheless, based on the analysis of the data that is available for us, it was revealed that 397 sponsors of the Unified National Movement, 33 sponsors of the "Georgian dream", and up to ten sponsors of other political associations were somehow connected to business".

There are clear examples of this in the report. Thus, two representatives from one of the constructional companies – «Modernhaus» – have donated 117 000 lari to the Unified National Movement. A partner of «Liberty Holding Georgia» V. Gurgenidze and the partner of the affiliated company «Tegeta Motors» T. Kohodze donated 60 000 lari to each of the former ruling teams. The same amount was donated to the Unified National Movement by the owner of «Goodwill» Supermarkets – E. Chhaberidze[9].

[8] Німецький бізнес скорочує фінансування партій. URL: http://www.zakonoproekt.org.ua/nimetsjkyj-biznes-skorochuje-finansuvannya-partij.aspx.

[9] Финансирование политики бизнесом всегда связано с риском коррупции – TIG. URL: http://www.apsny.ge/2013/pol/1365885061.php.

At same the time where the above-mentioned states allow the financing of political parties by big business, thing are different in other countries – for example, in Latvia, there is an on-going active countering of political crimes. The head of the department for monitoring the financing of political parties of the Bureau of Countering Corruption (KNAB) of Latvia I. Yaunskunga has stated that the Latvian system of monitoring the financing of political parties is one of the best ones in Europe. At the end of 2016 KNAB workers filed a criminal investigation about the violations of law in the field of financing of the political parties. The main suspect was the mayor of Jurmala G. Truksnisa (the Union of «Greens» and peasants», millionaire Y. Kruminsh has been arrested, head of the Kurzeme District Court of the Riga City A. Ornitsya and the financier Y. Raytums were dismissed from their positions, and a rummage was conducted in the Bureau of I. Sudraba's political party «From the heart of Latvia». The former president of Latvia A. Berzinsh, and also the head of the parliamentary fraction of the union of «Greens» and peasants A.Brigmanis[10] were also noted in the framework of this criminal case.

It is also noteworthy that despite the fact of KNAB's effective work, political scientists state that the country is governed by individuals who have large amounts of money. This leads us to a thought that not everything is going so smoothly in the field of financing political parties in Latvia, as the government says.

According to F. Rajewski the flow of money in politics must be restricted: «It is very important to understand who is influencing the politics because money is the most direct instrument of influence on political parties. Those who earn money are influencing it; those, who are interested in legislative changes; those, who are interested in public procurements. Well, everything is clear: there is a redistribution of the state recourses with the help of political parties, which are the instruments for these redistributions. This is basically the fundamental truth that can be found in any book about politics". F. Rajewski believes that it is practically impossible to protect political parties from money, but it is possible to restrict their expenses. That means that «rinsing the minds of voters before the election, conducting massive election campaigns, which have no content except beautiful pictures and charming tales about good

[10] У Латвії до незаконного фінансування партій міг бути причетний екс-президент – ЗМІ. URL : http://1news.com.ua/svit/y-latv%D1%96%D1%97-do-nezakonnogo-f%D1%96nansyvannia-part%D1%96i-m%D1%96g-byti-prichetnii-eks-prezident-zm%D1%96.html.

politicians on the television. Thus, the influence of personal capital of third-person parties on lawmaking and other aspects of Latvia's political life could be reduced". As stated above, certain successes in this area already exist in the KNAB[11].

The experience of the last parliamentary elections in Latvia, when there was no limitations of spending on the last election campaign, political parties spent around 9 euro per each voter (the biggest amount among all European countries) which indicates that the victory of one or another political force in the election is indicated by the amounts of money spent on pre-election agitation and political commercials on the television[12].

Continuing the thesis of the successes of foreign countries against overcoming corruption, we should note that on April 3, 2015, the richest man in Romania billionaire I. Niculae was sentenced to two years and six month in prison for illegal financing of one of the candidates of the presidential election in 2009, M. Joanne.

According to the data of the investigation, a former functionary of the Social Democratic Party (PSD) of Romania B. Stanku received one million Euros from I. Niculae for the pre-election campaign of the PSD'S leader M. Joanne, resulted in his loss at the presidential election to T. Bessesk. In exchange for financial support, if M. Joanne had won the presidential election he would have appointed people close to I. Niculae in the Ministry of Economy to lobby businessman's projects. In addition, B. Stanku was also sentenced to three years in prison.

Romanians achieved success in the fight against political corruption due to these three factors:

– The existence of norms in the legislation, which increased the transparency and the accountability of the profit controlling agencies and expenditures of political parties and their candidates during their pre-election campaigns;

– The existence of independent criminal agencies and accordingly – the existence of investigators, prosecutors and judges;

[11] Андреев А., Артёменко В. Политолог призвал ограничить партиям возможности тратить деньги. URL: http://lr4.lsm.lv/lv/raksts/den-za-dnem/politolog-prizval-ogranichit-partijam-vozmozhnosti-tratit-dengi.a75255/.

[12] Фінансування політичних партій. URL : http://yuriy-shveda.com.ua/index.php/en/publicistics/articles/84-finansuvannya-politychnyx-partij.

– The legislation about the state financing of political parties, which provided the tools for law-enforcement agencies and the public to control the incomes and the expenses of political parties.

V. Taran says that the introduction of similar norms into the Ukrainian legislation is, perhaps, the only way to overcome political corruption in Ukraine[13].

Not so long ago a scandal with the highest political leadership broke out in Chile. During the time of the 2013 election campaign, the Minister of Foreign Affairs E. Munos organized a dinner on a luxurious yacht, to which he invited not only the local rich people, but also several Latin-American diplomats. To enter this event you had to pay 1000 dollars, and the money allegedly went to support the future president – a candidate from the Socialist Party M. Bashelle.

The Court of New Zealand has established that the former candidate for the mayor position D. Banks anonymously received 40 000 dollars from the founder of the Megaupload site – K. Dotcom. In the bank, K. Dotcom was advised to split his bank account into two separate ones to hide the data about who made the donations. As a result of discovering the financial identity falsification, D. Banks, who was a deputy at the time, had to leave parliamentary position.

Activists from the Czech Republic have created a site where the information about the political party's donors is being constantly published. You could find which oligarchs are very much interested in the politics here in 30 seconds. Moreover, there is information about companies who donate money to parties and then receive profit from the state's procurement procedures.

The "liberal" model in financing election campaigns was established at a legislative level in the early 90's of the twentieth century in the majority of post-socialists states of Europe, it was a model which did not provide any restrictions to financing a political party in the elections. In particular, they did not limit the maximum amount that could be donated to the electoral campaign (the size of the electoral foundation), nor the sources that formed the electoral foundations, nor the donation amounts; there were not any requirements about the need to report the sources of income and where the money was going to be used during the election campaign. This model existed for a long time in Latvia, Lithuania,

[13] Таран В. З чого потрібно починати деолігархізацію України. URL : http://www.pravda.com.ua/articles/2015/04/9/7064261/view_print/.

Estonia, Bosnia, Croatia, Poland, but the lack of any restrictions about the size of the election foundations turned election campaigns from the conflict of ideologies to the conflict of money[14].

In general, the rules of financial accountability for parties operate in 125 different countries in the world. The most common way of reducing the influence of big business is the restriction of the maximum amount of yearly or pre-electoral donations. But without an adequate system of control and the effective work of the control agencies, these measures are pointless. Nothing prevents the donators from splitting the amount of their donations into two separate ones and transferring them through forensic individuals. This is why corporative contributions should not be restricted, although that norm has already acted in 40 countries.

A similar issue happens with anonymous donations. They can only be revealed if the donation is conducted through a special banking account. But what about the small donations that the party receives during its election campaigns? Usually this problem is solved through the implementation of a certain barrier below which the anonymity of the donator is preserved.

In both cases it is important not to overestimate the margin so manipulations with artificial splitting of donations have become unbeneficial. This problem is being encountered all around the word, this includes developed countries.

The last, but at the same time the most important issue is the shadow donations. Even if the political party has a transparent bank account and a very low barrier for anonymous donations, it is not certain that all registered donations pass through it. Let’s say that during the election campaign political parties get the ability to get discounts on party services, this opens a room for shadow donations. Although, it could be restricted by legislative norms, when services could only be provided at an average market value.

There are other ways such as opening a shadow bank account. This tactics is used all around the world, and it is almost impossible to discover the machinations of political parties this way.

As numerous examples show, transparency systems can not deprive political parties and corrupt politicians from the temptation of getting additional donations regardless if they are legal[15] or not.

[14] Фінансування політичних партій. URL: http://yuriy-shveda.com.ua/index.php/en/publicistics/articles/84-finansuvannya-politychnyx-partij.

2. Peculiarities of Financing Political Parties in Ukraine

As of today, Ukraine has taken into the account the recommendations of PACE 1516 (2001) «European standards in the field of financing political parties» (In case of violating the legislation, political parties must be subjected to sanctions… When individual liability is established, sanctions must annihilate the mandate and temporary restrict parties from having the right to get certain positions, as well as the recommendations given in the GRECO Assessment Report «The transparency of financing political parties», the third round of evaluation (2011) «….to ensure that all violations of…. the rules of financing political parties and election campaigns were clearly defined and punished with effective, proportionate and dissuasive sanctions; party representatives and candidates should be personally responsible for violating the laws of party financing and electoral campaigns; the limitation periods for these offences would be sufficiently long to allow competent agencies to effectively monitor the financing of political parties». In order to prevent political corruption there is a criminal responsibility for such actions in the Criminal Code of Ukraine, for example, Article 159-1 (Violation of the laws of financing political parties, pre-election agitation, and agitation from the United Ukrainian referendum or the local referendum) and Article 160 (Bribery of a candidate or a referendum participant).

Some Ukrainian politicians are not very optimistic about the state funding of political parties in Ukraine. Thus, V. Lutsenko, a national deputy from the party "United Ukrainian Union of «Motherland" who is now the General Prosecutor of Ukraine does not believe that we can obtain the result from financing political parties that everyone expects. If we split the donated money to the amount of parties that are supposed to be financed, we will get less than 80 million UAH for each one, which means around 3 million dollars. This is the budget of one of the major-election campaigns, which means the elections of one oligarch on one district. That definitely will not equal the rights of all political parties; it won't become a real support for young and minor parties like «Demalliance» and others. The party's survival in the electoral race is influenced by much smaller expenses. Their main expenses go to media, television channels for example. Sponsorships are usually based on media and not finances. For example, a certain oligarch negotiates with some

[15] *Лємєнов О., Кучма О.* Гроші партій: як залишити олігархів без «політичного таксі». URL : http://www.pravda.com.ua/articles/2015/04/16/7064924/.

kind of fraction, he lets them to be on his channel for certain benefits, and in exchange, the fraction promises not to vote for a decision that won't be beneficial to the oligarch. All of this work is usually done during the election period to increase the ratings.

As for Majoritarians, they receive a franchise on one or other side of the territory. It means that the candidate should not provide support to the party's brand and actually needs to finance his advertisements himself. This is how the party gets profit from him, and the candidate goes as an influencer from the party. This money is associated with the "shadow" schemes and revealing them is very hard.

Politic scientist V. Fesenko mentions that the financing of political parties in Ukraine is still hidden, so it is almost impossible to evaluate whether sufficient money has been allocated from the budget or not. It should be noted that more and more political parties in the regions are being supported by local sponsors. It is also hard to say what the ideal model of calculation of the state financing should be, and what the minimum of funds needed for the functioning of parties and their needs is. It is quite paradoxically, but the authors of the draft law have taken the experience of counting amounts from Russia. There is 1 billion rubles contributed to these purposes each year in the Russian Federation. It only depends on the political party whether the oligarch's influence on politic parties has reduced or not. We have to be realists here. If the party wants to receive additional profit, they will get it. But then why the state financing of political parties should exist? It is important because it reduces the temptation. It is important so that the parties that don't want to take money from the oligarch's would have an alternative.

Political analysts believe that as the result of implementing the law of state funding the influence of oligarch on political parties will be reduced, but only one law will not be enough. This is a major step forward, but it is far from separating oligarch's relations with political parties[16].

In Ukraine, if the party overcame the 5% barrier during the last elections, it will receive financial support from the state. According to the results of the 2019 elections, parties that overcome the 2% barrier will receive financing. As the coordinator of parliamentary and election programs believes, the state financing in Ukraine could be used as to reassure the transparency of expenses and donations on political party's

[16] Середа Е. Госфинансирование партий не уменьшит влияния олигархов на политику, – эксперты. URL : http://hubs.ua/authority/gosfinansirovaniepartij-ne-umen-shit-vliyanie-oligarhov-na-politiku-eksperty-89354.html.

bank accounts during the inter-election period and during the elections. At the same time, the parties should be prepared for the audit of their financial activity, adjust their financial flows and their structures. But nowadays the problem is that the political parties aren't interested in doing this. They are satisfied with the unaccountable methods of spending oligarch's money on election campaigns and during the inter-election period. So they do not seek the state funding. It is extra-parliamentary parties or new political forces of European orientation which are interested in such laws[17].

Ukrainian citizens also do not ignore the problem of financing political parties. Here is an abstract from a critical article from Ukr.media, in which the author allegorically conveys the imperfection of the Ukrainian law about financing political parties and tells everyone not to copy the foreign experience in this problem, from which you could conclude a certain rational kernel: "Just like savages who saw a fancy necklace (heard that the state finances political parties from its budget) and start to run around with it like it's a new purse, without even thinking how that law is going to work in practice. The main channel for avoiding any restrictions about financing campaigns and political parties is shadow financing (and the support) thought the controlled mass media which belongs to the…… oligarch. There isn't a way to control hidden advertisements (through the news for example), because it will be stated to the wise men that we have such editorial policies. Basically, the dependence from the oligarch will increase drastically. I am confident that there will be a business soon where a network of people is going to be built, a network which is going to constantly donate something for someone while not violating the law. …. The pittance that the state is donating to the financing of the campaign could not even be compared with the budget that the business and the lobbying of interest are going to give them. The most important thing here is to implement the law about "lobbying", which will somehow regulate this market and make it transparent, because its main goal is based on normal and rational logic – politicians will always use their position»[18].

For the sake of objectivity, we should quote the thoughts of average citizens about this problem, stated in the petitions. Thus, this is what the

[17] Кривцун Д. Чи реальне державне фінансування партій? URL: https://day.kyiv.ua/uk/article/podrobyci/chy-realne-derzhavne-finansuvannya-partiy.

[18] Чому олігархи лопнуть від сміху від нового закону про фінансування українських партій. URL: https://ukr.media/politics/244904/.

Ukrainian citizen suggests (taken from the petition's text): "When the authorities comply with the West's requirements about the financing of political parties by the citizens of the state then it is necessary to make some corrections in this law, which prohibits financing without ideology, without the democracy of business-political projects, which are registered for the elections and also for parties registered for one individual. If we accept the financing of political parties by the citizens, it would be fair if the citizens finance the political parties themselves and not business-political projects, with their political ideology and democracy, which at the beginning of the 90s were fighting for Ukrainian interests and independence, while not stealing anything from Ukraine»[19]. Interesting propositions are outlined in the Russian Federation in a petition which suggests perfecting the state financing of political parties through the method of taxes, which would stimulate donations to the supporters of political parties. It is economically unprofitable for a worker to join an independent politic party from the business money and oligarchs. Regarding the financing of political parties by commercial companies (legal entities), they seek to receive direct or indirect benefits like lobbying the interest of some certain company, or gaining the deputy's immunity. In this case the party mostly works for the business and not for the workers. The author of the petition suggests letting individuals to yearly donate a certain amount from their paid taxes for the last year on the bank account of the political party that they support through the private taxpayer's cabinet. This will reduce the financial dependence from the investors, whose interest is being lobbying by the forced parties, which causes losses to the most of their civilian supporters.

Such financing does not cancel the already implemented laws about the state's financing; it only reduces the planned amount of money, which is allocated to political parties proportionally to the amount that the citizens have contributed through their personal taxpayer's cabinets. Which result is expected from the suggested innovation? The most productive and useful political parties will receive more money, the support of the citizens, and more chances to take the authorities position, and the ineffective ones will have to re-consider their campaigns. This stimulates the parties to execute their pre-election promises to the voters. On the other hand, the voters could limit party's financing due to the laws

[19] Швець І. В. Заборонити фінансування з кишень українських громадян так званих політичних партій, бізнес– проектів під одну особу-олігарха. URL: https://petition.president.gov.ua/petition/15769.

that clearly include corruption, that were adopted by the party[20] in the future.

According to the authors studying non-governmental organization of Georgia, the financing of politics by business is always associated with the risk of corruption. That is why a proper regulation of donations is needed. On the other hand, a complete prohibition of donations from the legal entities causes unjustified and disproportionate restriction of their constitutional rights of freedom and expression of their political activity. The report highlighted the fact that there isn't a single document which has been developed by a certain international organization about Georgia, which would suggest a complete restriction for financing political parties by the legal entities. The authors believe that instead of a complete prohibition to financing political parties by the legal entities, certain regulating norms should be implemented to avoid already existing risks[21].

One of the political parties in Ukraine has suggested another scheme for the interaction of state and the business as a basis to form a new social politics of the state. According to its ideology, the dialogue between them will develop when both sides accept their obligations. Each sector should define its field of responsibility. There should be no situations where the authority agencies will force business to donate money for social projects. A certain quote applies to business as well as too all of us: «Living in a society while being free from the society is impossible". But even to this day the national business is not fully aware of the fact that the decisions of long-lasting and short-lasting business objectives are tied with the tendencies of the development of society as a whole. The priorities of all forms of business shouldn't just change; they should expand their narrow temporary boundaries. The emphasis on receiving the maximum profit should be gradually replaced by the realization that the focus on the socially-responsible business is the key to future growth of the company, its employees and the whole society. That way socially-responsible business, and the goals and objectives of the project could be realized only in a narrow space of combining the interest and the priorities of three groups – the business itself, the state and the society. We are talking about such social changes that could lead to a convergence of these interests[22].

[20] Усовершенствовать государственное финансирование политических партий через налоговые методы, стимулирующие пожертвования сторонникам партий. URL: https://www.roi.ru/25422/.

[21] Финансирование политики бизнесом всегда связано с риском коррупции – TIG. : URL: http://www.apsny.ge/2013/pol/1365885061.php.

[22] Новая філософія бізнеса. URL: http://www.narodnadovira.org/p/blog-page_29.html.

This concept have something in common with the conclusion of criminologist Y. Orvol that the strategic principles of relations between the state and large businesses should include neither confrontation, nor the attempts to clear the authorities from the oligarch's influence, they should include the cooperation with the further elimination of criminal forms of activity in the field of politics[23].

There is an opinion that the financing of political parties by the business representatives is beneficial not only to the political parties, but also to the state because when the national financing takes place there will be no attempts and desire to find means for work elsewhere, including somewhere abroad. This is basically how it happens all around the world: people finance political parties because of their political beliefs, and opinions, and that's how they finance their future. They finance the economical and social campaigns which are beneficial for them; they support different political parties which contribute to the promotion of their opinions and ideas. Belarusian politics mention that: "It doesn't matter which statement and actions are made by the authorities, business is the only thing that helps us, people help us", «if there are mechanism for this, but unfortunately all of this what happens causes damage to the national interest and to the development of the political system, which is bad to the economic development and the country's[24] development in general».

It should be taken into the account that there are no oligarchs in the EU that we know in the Ukrainian sense. There are only big businesses, which pay taxes and do not affect the politics directly. The society must learn to see the difference between big business which honestly pays taxes and oligarchs who get rich from monopolies, corruption schemes and the access to the state-owned enterprises, between the freedom of speech and the fake information by the bribed mass media, between true patriots and the playing politics, who protect their sponsors[25] by shouting patriotic slogans.

[23] Орлов Ю. В. Політико-кримінологічна теорія протидії злочинності : дис. ... д-ра юрид. наук : 12.00.08. Орлов Юрій Володимирович. Харків., 2016. С. 375.

[24] Финансирование бизнесом политических партий: за и против. URL: http://www.interfax.by/news/belarus/1125935.

[25] Шокотерапія для олігархів. URL: http://archive.volyn.com.ua/printver.php?rub= 4&article=0&arch= 1803.

CONCLUSIONS

An analysis of the political party's activities in countries makes it possible to draw the following conclusions: a) political parties that are deeply integrated into the state's political mechanism have a much larger influence on the social-economical and political processes, that happen in the society; b) the conclusions about the party's activity shouldn't be based on its name, activity, pre-election platform or the popular slogans, that it uses during the election campaign, but on specific actions that the party makes when it takes the authorities position, works in the state's structures on a coalition basis or as an opposition party.

The lack of legislative limits of expenses and the donations to the election campaign, the requirements to reveal the information about the sources of the election foundation formation, which leads to the increase of the corporations influence on the party's finances, which means the corruption of the politics, but on the other hand – it does not give a basis to reveal which financial-industrial groups are behind the victory of a political party on the elections. All of this makes it necessary to implement restrictions about financing election campaigns[26].

The financing of political parties by big business should only be implemented only under the conditions of the process transparency, and the possibilities of controlling it from the citizens' side. Large businessman, millionaires are people with a commercial streak, strong leaders, excellent managers who have the right connections and acquaintances, which strongly help them to organize efficiently and correctly almost any case. This is why the state should not deny the financing of political parties by big business, but rather cooperate to receive equal benefits for both sides.

Analyzing the foreign experience and Ukrainian realities the new trends for the formation of a new philosophy of political party financing in Ukraine by big businesses can be seen based on mutual cooperation of large private corporations and the state as well as transparent and fair grounds. This way is the only factor of reducing corruption in the world.

SUMMARY

It is a well-known fact proved by scientists that corruption can accompany the process of financing political parties. This is exactly why

[26] Фінансування політичних партій. URL: http://yuriy-shveda.com.ua/index.php/en/publicistics/articles/84-finansuvannya-politychnyx-partij

the problem of financing elections campaigns in relevant not only in Ukraine, but also in the political life of all developed countries.

Usually businessmen who invest in political parties expect to gain profit from them. In Ukraine this business could earn profit due to assignment of its protégés to the top positions in the Cabinet of Ministers of Ukraine, The Security service of Ukraine, the General Prosecutor's office of Ukraine and the Ministry of Internal Affairs of Ukraine, judicial agencies, etc. that use illegal ways. However, does the tendency of «big businesses» financing political parties have any negative effect? In general, the problem of financing political parties shouldn't be seen only in the form of state funding, but also in the form of using the funds from large business groups and oligarchs for maintaining political parties An analysis of the political party's activities in foreign countries makes it possible to draw the following conclusions: a) political parties that are deeply integrated into the state's political mechanism have a much larger influence on the social-economical and political processes, that happen in the society; b) the conclusions about the party's activity shouldn't be based on its name, activity, pre-election platform or the popular slogans, that it uses during the election campaign, but on specific actions that the party makes when it takes the authorities position, works in the state's structures on a coalition basis or as an opposition party. The financing of political parties by big business should only be implemented if the conditions of the process transparency are met, and the possibilities of controlling it from the citizens' side. Large businessman, millionaires are people with a commercial streak, strong leaders, excellent managers who have the right connections and acquaintances, which strongly help them to organize efficiently and correctly almost any case. This is why the state should not deny the financing of political parties by big business, but rather cooperate to receive equal benefits for both sides. Considering foreign experiences and Ukrainian realities, one can observe the tendencies towards the formation of the new philosophy of financing political parties in Ukraine by the big business, based on the cooperation from large private corporations and the state on transparent and fair grounds. This is one of the ways to minimize corruption.

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HUMAN LIFE AS THE HIGHEST SOCIAL VALUE AND THE SUBJECT OF LEGAL PROTECTION

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INTRODUCTION

Article 3 of the Constitution of Ukraine proclaims the fact that a person, his/her life and health, honor and dignity, inviolability and safety are recognized in Ukraine as the highest social value. For that reason, the issues of crime qualification against the most valuable human benefits – life and health is of great attention because in the criminal legal aspect such infringements are recognized as the most dangerous.

Human life is a special form of human existence (human organism) characterized by integrity and ability to self-organization; it is the most valuable benefit, which in case of human death can not be renewed. Human life is characterized by reactivity, breathing, thinking, sensitivity, vision, communication, nutrition, growth, movement, metabolism, and reproduction etc.

1. Human Life as the Highest Social Value

In all periods of development of civilization, the problems of the human life value, which is the core of the culture of all people, nation and society, play an important role. The right to life is the main human right proclaimed and enshrined in the Universal Declaration of Human Rights dated December 10, 1948, as follows: “Everyone has the right to life, liberty and security of person”.

John Locke was the first who formulated and philosophically justified the very idea of human rights. The philosopher called the right to life as one of three natural rights. The thinker considered life, freedom and property to be decisive for a person. He called these rights as inalienable as they are a part of human nature, therefore they can not be granted or withdrawn. This thought of J. Locke was brilliantly continued by Alexander Hamilton one of the founders of the United States, who at one time pointed out: “The sacred human rights of mankind are written by the

light of the sun, by the hand of God on all people and will never be erased or distorted by any power on the Earth".

In a modern social consciousness, the prevailing idea is that the threat to the human freedoms and rights can only come from the state, a potential bearer of a despotic beginning, and never from the people who are immanently striving for freedom. This position seems obvious to many people, but needs to be clarified. Even if, in most totalitarian doctrines, the subjectivity of the state is humiliated: it acts formally not only as one of the most important components of civilization, but also as an instrument of preservation and domination of the true subject of history – the people[1].

However, an attempt to define human rights as the highest value also carries "a seed of the eternal". At that time another prominent German philosopher F. Nietzsche showed the problematic nature of the philosophy of values, which are known to have their own destiny. C. Schmitt pointed out to the problem of interpreting human rights as eternal values, noting the following: "If we consider the fundamental rights as values, then the question naturally arises: why these values (life, freedom, property) should be considered as such only in relation to the state? It would be logical to spread such attitude to them on legal relations that arise between citizens". As C. Schmitt emphasized in his work under the expressive title "Tyranny of Values", "get dressed in subjectivity, freedom is replaced by the objectivity of values, which is objectivity only by imagination. Someone who refers to values can not oppose anything to the pursuit of revaluation, discredit, or doubt in one or another value"[2]. Indeed, what prevents the sovereign from reviewing the status of these norms-values, and are there any grave obstacles to this? According to K. Schmitt, such justification of value-based principles is a weak link in this version of human rights, and in this case, even the provision of "transcendental" status to these legal values does not help much. Certainly, C. Schmitt continues that constitutional norms could be considered as expressions of "a system of values" or "a natural-legal system" (since they are fundamental rights). However, the inevitable consequence and reckoning will be loss of value of the very text of the Constitution and its conceptual structure. At the end, we gain the value with a "positive" and

[1] Поппер К. Открытое общество и его враги : в 2 т. / К. Поппер. – Москва, 1992. – Т. 2. Время лжепророков: Гегель, Маркс и другие оракулы. – С. 76–77.

[2] Schmitt C. Die Tyrannei der Werte / C. Schmitt. – Hamburg, 1979. – S. 33–37., c. 33

"suprapositive" property, but the experience of recent decades gives a lot of reasons for doubts (moreover, not only in Germany) in their stabilizing role"[3].

Therefore, it is reasonable to point out that: either fundamental rights (the right to life) are values subject to the same legal protection both in relations between citizens and the state as well as between citizens, or in one case the fundamental rights are non-acquired eternal values, and in the second – subjective acquired rights. According to C. Schmitt, there is such difficult situation which interpreters of the Constitution get as the system of values, where one of the basic (main) values, along with property and freedom, is human life.

At the same time, the reception of the principle of primacy of human rights, carried out in Ukrainian constitutionalism, can be regarded as a peculiar presumption of "guilt of the state" towards a citizen. The state, as noted by the well-known constitutionalist J. Isensee, "squeezes into the Procrustean bed of constitutional duties, while the citizen is given freedom in relation to the state, and through the citizen – the whole society"[4].

The consolidation of human rights and freedoms as the highest value means that in relations of a person, society and the state the priority belongs to the rights and legitimate interests of a person. In other words, if a person is the highest value, then his/her rights are the values of the same highest order that "precede the Constitution" and even have primacy over state sovereignty[5]. In this regard, the question arises: is there anything in this world that is above human rights; or human rights are always "over the world"?

In our view, in case of such "conceptualization" not any state can simply exist under a more or less serious test. The liberal principle of the superiority of the rights of a person over the rights of the state in its practical implementation inevitably leads to the collapse of the state and, accordingly, to the collapse of the human rights, because without the state they will not be protected by anyone. In support of the above, it is reasonable to quote I. Kant: "Democracy in the proper sense of the word is inevitably despotism, because it establishes such executive power,

[3] Schmitt C. Die Tyrannei der Werte / C. Schmitt. – Hamburg, 1979. – S. 33–37., c. 34

[4] Isensee J. Burgerfreiheit und Burgertugend / J. Isensee // Der Preis der Freiheit. – Kцln, 1998. – S. 20., c. 20

[5] Садовникова Г. Д. Комментарий к Конституции Российской Федерации (постатейный) / Г. Д. Садовникова ; отв. ред. Конюхова И. А. (Умнова). – Москва : Юрайт, 2000. – 189 с., с. 15–16

where everyone decides about one person and in any case against one person ... this is a contradiction of the common will with itself and with freedom[6]. From incompatibility of unlimited democracy with the human freedom and dignity it follows that from standpoint of a liberal worldview, for which the very highest value is the person (his/her rights and freedoms), only the power of laws can be just.

Article 3 of the Constitution of Ukraine stipulates: "Human rights and freedoms and their guarantees determine the content and direction of the state. The state is responsible to a person for its activities. The assertion and guarantee of human rights and freedoms is the main responsibility of the state". It can be said that this article "sets the tone" with all the following constitutional provisions, reflecting the real or desired position of a person in the Ukrainian society, regulating his/her relations with the state, directing the state policy. In a word, it is the basic article that characterizes the very foundations of the social and state system enshrined in the Constitution. It is the normative and legal foundation for the humanistic direction of the development of public and state life in Ukraine.

The above provision briefly reproduces the content of the conceptual foundations of the preamble of the Universal Declaration of Human Rights, which in itself should determine the compliance of the provisions of the Constitution of Ukraine with international human rights standards. Among these grounds, it should be noted, in particular, "belief in basic human rights, in the dignity and value of the human personality", as well as "recognition of the dignity inherent in all members of the human family and their equal and inalienable rights". The above postulates are reproduced in the preamble of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Certainly, the recognition of human life as a social value is fundamentally important: it means that human life is a value not only for person himself/herself, but for society as a whole, for community. Moreover, since this value is the highest, no other phenomenon can be appreciated by a society higher than human life, can not, so to speak, surpass its value.

[6] Кант И. К вечному миру / И. Кант // Кант И. Соч. : в 6 т. – Москва, 1966. – Т. 6. – С. 269–270., с. 269

Objectively, the right to life serves as a benchmark, a criterion for the whole institute of rights and freedoms in a democratic society. When it is stated that human rights are the highest social value, this also implies to the person as the holder of these rights. Without a person, outside, in isolation from a person, any rights turn into something that means abstraction. Thus, this right, undoubtedly, forms the basis of all other rights and freedoms. It represents the absolute value of world civilization, since all other rights lose meaning and significance in the event of the death of person. Definitely, a person and his/her life are the basic, fundamental value with which all legal systems should relate. The right to life is given by person by nature (in some concepts – by God), but never – by state or power. The latter are only obliged to recognize, respect and defend this value in all respects that dominates over all others.

At the present stage, the concept of human rights has become a leading element of political liberalism, its cornerstone, almost metaphysical level. This is the fundamental level of the general liberal theory in which metaphysics is "the discovery of the ultimate cause of things, their first and universal beginning", where one of the first must be the question about "the grounds" and the "first and universal principle" of life[7].

Human life is not only a subjective right protected by legal norms, but also an independent social, spiritual and biological value. Protection of each person's life is a primary task of criminal law. Many lawyers have dedicated their works to the criminal legal life protection, but their works do not exhaust all the problems of criminal law in relation to the comprehensive life protection. One of these problems is the question when life begins, and, accordingly, its criminal legal protection. Clarification of this issue is directly related to possibility of bringing the guilty persons to criminal liability for infringement on life.

2. Human Life as the Subject of Legal Protection

As to the question of the beginning of life in legal and medical literature, there are many different points of view. In particular, researchers determine the beginning of human life from a certain stage of physiological birth. At the same time, one group of scientists believes that

[7] Мондін Б. Підручники систематичної філософії : в 6 т. / Б. Мондін ; пер. з італ. Б. Завідняка. – Жовква : Місіонер, 2010. – Т 3. Онтологія і метафізика. – 284 с., с. 8

human life begins with the moment when a child is capable of independent existence, completely separated from the mother's body and has made his/her first breath (B. Zdravomyslov, O. Krasikov, S. Boyarov, O. Naumov, M. Shargorodsky etc.). However, in 1923 S.V. Pozdnyshev wrote: "The most convincing proof of the newborn's life is breathing. However, there are possible cases when the child was not breathing, but already lived through the blood circulation"[8].

Other scholars note that the moment of the beginning of human life is associated with such a stage of physiological birth delivery, when only a part of the child emerged from the mother's womb (V. S. Borodin, O. O. Zhizhylenko, B. S. Utevsky, A. A. Piontkovsky, Ye. F. Pobegailo, Yu. B. Khimyak at al.). In this regard, at that time V. D. Nabokov noted: "... The moment of birth ... should be considered the beginning of birth delivery, and at the same time not in the understanding of the physiological beginning (for example, the appearance of pain), but in the sense of the appearance of any part of the child's body outside: from this moment the concept of the fetus is replaced by the concept of the child"[9].

Some authors point out that the initial boundary of human life should be associated with the emergence of the formed mass of brain cells, which makes the fetus viable[10]. Proponents of this position came to the conclusion that, from a legal point of view, the beginning of human life is the birth (formation) of the brain, namely: the achievement of twenty two weeks of intrauterine development by the fetus[11]. At the same time, it should be noted that in modern criminal legal literature attempts are made to determine the moment of the beginning of life in another way. So, according to Professor V. O. Glushkov, the life of a human fetus after twenty eight weeks – an additional object of illegal abortion, so his/her death as a result of an illegal operation should be qualified as a murder[12].

As to the beginning of life, it is possible to recognize the position of M. Ya. Korzhansky as substantiated, who notes that this is the beginning of physiological birth delivery, "when the development of the fetus has

[8] Позднышев С.В. Очерк основных начал науки уголовного права. Особенная часть М., 1923, С. 6

[9] Набоков В.Д. Элементарный учебник особенной части русского уголовного права / В.Д. Набоков. – СПб : 1903. – 136 с., с. 5

[10] Шарапов Р. Начало уголовно-правовой охрани жизни человека / Р. Шарапов // Уголовное право. – 2005. – № 1. – С. 70–81., с. 75

[11] Трубников В.М. Концепція кримінально-правової охорони : монографія / В.М. Трубников, Т.А. Павленко. – Х. : Харків юридичний, 2009. – 288 с, с. 117

[12] Глушков В. А. Ответственность за преступления в области здравоохранения / В. А. Глушков. – К. : Вища школа, 1987. – 200 с., с. 21

come to an end and it has matured for independent life beyond the mother's body, a new life appears that should already be protected by a criminal law"[13].

There is a point of view according to which the moment of the beginning of life is the moment of fertilization[14]. In legal science there are steady trends of support of exactly this point of view. So, some scientists point out that "the period of intrauterine development of a person is an early period of his/her biological life. Being in the maternal womb in the state of the embryo, he/she is bodily independent, because he/she is not a part of the body of the carrier and is capable of self-development: after all, the vital processes taking place in him/her, act as an internal impulse for his/her development. The body of the mother is only an ideal development environment. From the birth begins the second stage of the biological existence of person, more precisely, the stage of his/her stay in the social environment. This proves the incorrectness of the existing opinion that human life begins with his/her birth. It should be corrected: the social life of a person begins from the moment of his/her birth"[15].

Some authors believe that "the legal relation to the status of embryos should be based on the recognition of the fact that the embryo is not a part of the mother's body, but the beginning of a new life"[16]. It should be emphasized that the given position has its normative consolidation. In particular, in civil legislation of Ukraine in Article 1222 of the Civil Code of Ukraine, the right to inheritance arises in a person who was conceived during the life of the testator and born alive after the opening of the inheritance.

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[13] Коржанський М.Й. Кримінальне право. Законодавство України. Частина Особлива. Курс лекцій / М.Й. Коржанський. – К. : Атіка – 2001. – 544 с., с. 49

[14] Попов А.Н. Преступления против личности при смягчающих обстоятельствах / А.Н. Попов. – СПб. : Юридический центр Пресс, 2001. – 472 с., с. 56; Порошук С.Д. Право людини на життя як об'єкт нормативно-правового регулювання: сучасний стан, проблеми в Україні / С.Д. Порощук, О.В. Онуфрієнко // Вісник Луганського інституту внутрішніх справ МВС України: Наук.-теор. журнал. – Луганськ : Ін-т внутрішніх справ МВС України, 1998. –Вип. 2. – С. 3–18; Голиченков В.А. Заявление кафедры эмбриологии биологического факультета МГУ 03.09.1993 [Электронный ресурс] / В.А. Голиченков, Д.В. Попов. – Режим доступа : http://www.patriarchia.ru/db/text/3122712.html.

[15] Селихова О. Г. Конституционно-правовые проблемы осуществления права индивидов на свободу и личную неприкосновенность : автореферат дис. на соискание науч. степени канд. юрид. наук : спец. 12.00.02 «Конституционное право; муниципальное право» / О. Г. Селихова. – Екатеринбург, 2002. – 23 с., с. 13–14

[16] Беседкина Н. И. Конституционно-правовая защита прав неродившегося ребенка в Российской Федерации : автореферат дис. На соискание науч. степени канд. юрид. наук : спец. 12.00.02 «Конституционное право; муниципальное право» / Н. И. Беседкина. – М., 2005. – 23 с., с. 12

Supporting this approach, Professor A. I. Kovler emphasizes: "Modern law strongly defines another milestone: human life begins from the fertilization of the egg"[17].

Unfortunately, at the legislative level, the moment of the beginning of life is not clearly established. And only in clause 1.2 of the Guidelines for determining the criteria of the perinatal period, live birth and dead birth, approved by the Order of the Ministry of Health № 179 on March 29, 2006, states that "live birth is the expulsion or removal of the fetus from the mother's body, which after expulsion/removal (regardless of the duration of pregnancy, whether the navel cord is cut and whether the placenta is detached) breathes or has any other signs of life, such as palpitation, cord pulsation, certain movements of skeletal muscles",[18] although from this definition it is not clear what should be recognized as the beginning of life. The Instruction focuses on the criteria that indicate whether a person was born alive.

The decision on the problem of legal consolidation in relation to the moment when life protection begins should be found in terms of foreign, first of all, European legislative experience. In particular, under the legislation of most states of the European Union, human life begins at the time of his/her conception, and the child at the prenatal stage of development up to his/her birth by the very fact of his/her existence, including the fact of staying in physical (biological) relations with his/her mother, has a certain legal status that gives him/her the right to protection.

Traditionally, the prenatal period is divided into three stages: the zygote stage (about two weeks), the embryo stage (from the second to the eighth week) and the fetus stage (from the ninth week up to the birth). At the same time, the terms "zygote", "embryo" and "fetus" are used exclusively to indicate the stages of the ontogenetic development of the human individual, but can not in any way be the basis for recognizing the lack of value of the child's life at the prenatal stage of development.

In accordance with the Decree of the Grand Chamber of the European Court of Justice (Court of Justice of the European Union) in

[17] Ковлер А. И. Антропология права : учеб. для вузов / А. И. Ковлер. – М. : НОРМА – ИНФРА-М, 2002. – 480 с., с. 428

[18] Про затвердження Інструкції з визначення критеріїв перинатального періоду, живонародженості та мертвонародженості, Порядку реєстрації живонароджених і мертвонароджених [Електронний ресурс] : наказ Міністерства охорони здоров'я України № 179 від 29 березня 2006 р. – Режим доступу : http://zakon2.rada.gov.ua/laws/show/z0427-06.

case № C-34/10 on October 18, 2011[19], dedicated to the interpretation of Article 6, paragraph 2, subparagraph (c) of Directive 98/44/EC of the European Parliament and of the Council "On the legal protection of biotechnological inventions" [20] on July 6, 1998, a human egg from the moment of fertilization should be considered as a "human embryo" (subparagraph 1 of paragraph 53 and paragraph 35; herein – "in terms of content and for the purposes of subparagraph (c) of paragraph 2 of Article 6 of the Directive").

Being at the initial – prenatal – stage of human life and development does not give legal grounds to treat a person (and accordingly – his/her life) as an object that is not a human individual and has no right to life and is not subject to criminal legal protection. The right of such a child to life by its legal nature derives from the natural human right to life and should be recognized as the highest value by the state. Thus, the state is obliged to recognize the necessity for legal protection of the child's life and health at the prenatal stage of development and to establish legislative guarantees of the right to life of such child; his/her right to normal development and the criminal legal protection of his/her health from the moment of conception.

One should turn to the legal position of the European Court of Human Rights, which reflects not only the legal positions on the issues proposed, but also the value-based (axiological) grounds for the decisions taken on these issues. Thus, according to the legal position set out in § 82 of the European Court of Human Rights judgment on 07.07.2004 in the case "Vo v. France"[21] and later in § 107 of the European Court of Human Rights in the case of "Mehmet Şentürk and Bekir Şentürk v. Turkey" on

[19] Arrêt de la Cour de justice (Grande chambre) de 18 octobre 2011 dans l'affaire № C-34/10 // <http://curia.europa.eu/juris/document/document.jsf?text=&docid=111402&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=416805>. Judgment of the Court of Justice (Grand Chamber) of 18 October 2011, Case C-34/10 // <http://curia.europa.eu/juris/document/document.jsf?text= &docid=111402&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=416805>.

[20] Directive № 98/44/CE du Parlement européen et du Conseil du 6 juillet 1998 relative à la protection juridique des inventions biotechnologiques // Journal officiel des Communautés européennes. – 30.07.1998. – № L 213. – P. 0013-0021. <http://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX: 31998L0044 &from=EN>. Directive № 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions // Official Journal. – 30.07.1998. – № L 213. – P. 0013-0021. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31998L0044>.

[21] Arrêt de la Cour Européenne des Droits de l'Homme du 08.07.2004 de l'affaire «Vo c. France» (Requête № 53924/00) // <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-66445>.

09.04.2013 (final judgment on 07.09.2013)[22], in the absence of European consensus on the scientific and legal determination of the moment of the beginning of human life, the state has the right to independently resolve this issue: "The question of the starting point of the right to life shall be attributed to the discretion of the states themselves".

At the same time, in the resolution of the European Court of Human Rights on 08.07.2004 in the case "Vo v. France" it was stated that it was inappropriate to carry out the unification of the legislative norms of various states on this issue (§ 82), moreover, the Court noted that "certain elements of the legal protection of the human embryo/fetus arise in the light of scientific progress and future results of scientific research in the field of genetic engineering, artificial insemination or experiments on embryos"(§ 84).

According to the Constitutional Court of Spain resolution № 53/1985 on 11.04.1985[23], unborn children (subparagraph (c) of paragraph 5 etc.) have the constitutionally guaranteed right to life (as an embodiment of the fundamental value) and for, the state has an obligation to guarantee life, including for an unborn child (Article 15 of the Spanish Constitution), although within certain limits, determined by the interests of protecting the rights to life and health protection of the mother (paragraphs 12, 4 and 7); it is recognized that human life is a process of development that begins with pregnancy and ends with death, it is a continuous representation of qualitative changes in the physical and psychic nature over time, reflecting this in the changes in the status of the human individual from the point of view of public and private law (subparagraph (a) of paragraph 5).

The Resolution of the Constitutional Court of FRG on 28.05.1993[24] also confirmed the necessity to extend the right to life to children at the prenatal stage of development: "The basic law requires from the state to protect human life. Human life includes the life of the unborn. And this right must also be protected by the state" (paragraph 145). The German lawmaker represented by the Federal Constitutional Court of Germany, in

[22] Arrêt de la Cour Européenne des Droits de l'Homme (Deuxième section) du 09.04.2013 (Définitif – 09.07.2013) de l'affaire «Mehmet Şentürk et Bekir Şentürk c. Turquie» (Requête № 13423/09) // <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-118336>.

[23] Sentencia del Tribunal Constitucional de España № 53/1985 de 11 de abril de 1985 // <http://hj.tribunalconstitucional.es/HJ/pt-BR/Resolucion/Show/SENTENCIA/1985/53>.

[24] Decision of the Federal Constitutional Court, №№ 2 BvF 2/90, 2 BvF 4/92, and 2 BvF 5/92, May 28, 1993 // <http://www.bverfg.de/entscheidungen/fs19930528_2bvf000290en.html>.

his/her judicial practice still leaves the unsolved question from what period of life begins the protection of constitutional human rights. However, this higher judicial authority is more inclined to the fact that "human life begins with the merger of the egg and sperm"[25].

Accordingly, the assertion that an unborn child is a person is not only a philosophical, moral or ethical belief or assumption, but is legally significant established fact recognized by international law, confirmed by the provisions of EU international law[26] and substantiated by a greater amount of scientific knowledge gained in the fields biology, embryology, genetics, physiology and other sciences.

In the legislation of most European Union states, the norms that guarantee the right to life, health care and other rights of the child at the prenatal stage of development are enshrined. A number of fundamental rights must be legally recognized in a child at the prenatal stage, including the right to life, safety and protection, proper care and nutrition, special criminal law protection against all forms of negligent conduct, violence, intentional and unintentional harsh treatment and other actions that could cause harm to child's development.

It is obvious that at present the levels and specific measures of legal protection of a born person and legal protection of a person at the prenatal period of development vary significantly in different states, but this does not mean that the state's duty to observe and protect human rights at the prenatal period is less important (or that there is no such duty of the state at all) and that a person at the prenatal period is deprived of any legal protection.

Attention is drawn to clause 10 of the Recommendation of the Parliamentary Assembly of the Council of Europe № 1046 on 24.09.1986 "On the use of human embryos and fetuses for diagnostic, medical, scientific, industrial and commercial purposes" [27], which draws attention

[25] Гиряева В. Н. Хеун В. Исследования эмбрионов и конституция: право эмбриона на жизнь и человеческое достоинство. Heun W. Embryonenforschung und verfassung: lebensrecht und menschenwuerde des embryos // Juristen zeitung. – Tuebingen, 2002. – № 11. – S. 517–524 / В. Н. Гиряева // Социальные и гуманитарные науки. Отечественная и зарубежная литература. – Серия 4 : Государство и право : реферативный журнал. – 2004. – № 2. – С. 126– 129., с. 127

[26] Конвенция о правах ребёнка / Принята Резолюцией № 44/25 Генеральной Ассамблеи ООН от 20.11.1989 // <http://www.un.org/ru/documents/decl_conv/conventions/childcon.shtml>.

[27] Recommandation de l'Assemblée Parlementaire du Conseil de l'Europe № 1046 (1986) du 24 septembre 1986 «Utilisation d'embryons et foetus humains à des fins diagnostiques, thérapeutiques, scientifiques, industrielles et commerciales» // <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15080&lang=fr>; <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=15080&lang=fr>.

to the fact that “human embryos and fetus must be considered in all circumstances with respect for human dignity”.

Thus, the legal recognition of the child at any stage of intrauterine development as the subject of the right to life, the legal recognition of the rights of such child to life, health and development, as well as to criminal legal protection before his/her birth is expressed in a number of provisions of international legal acts, and is also confirmed by legally established guarantees in the legal systems of many foreign countries.

The right of the child to life and to receive protection from harm to his/her health and threat to his/her life at the prenatal stage of development is guaranteed, above all, by a number of international acts. Thus, according to the preamble of the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”[28].

It should be noted that the Declaration of the Rights of the Child specifies only two specific rights of the child that have arisen since his/her birth, namely: the right to a name and the right to a nationality (Principle 3), at the same time there are no indication of other rights of the child that arise only from the moment of his/her birth in this Declaration, and such restrictions on other children’s rights do not follow from it. However, the parents of the child have the right to give him/her a name and before his/her birth. Thus, the considered Declaration confirms possession of the child of a number of fundamental natural rights at the prenatal stage of development.

Interpretation of Principle 9 of the Declaration of the Rights of the Child is that “the child shall be protected from all forms of negligent attitude, cruelty and exploitation. He/she shall not be the subject of trade in any form whatsoever,” and the provisions of its Preamble on ensuring the appropriate legal protection of the child, before as well as after birth, – in their relationship, reveals their legal content, according to which the right of the child and, before his/her birth to be protected from all forms of negligent attitude, cruelty and exploitation and the need for States to provide such protection is recognized.

[28] Декларация прав ребёнка / Принята Резолюцией № 1386 (XIV) Генеральной Ассамблеи ООН от 20.11.1959 // <http://www.un.org/ru/documents/decl_conv/declarations/childdec.shtml>.

The preamble to the Convention on the Rights of the Child on 20.11.1989[29] states that its adoption was carried out, taking into account the above-mentioned imperative of the preamble of the Declaration of the Rights of the Child on 20.11.1959 on the need for legal protection and safeguard of the child before his/her birth as well. At the same time, in the same way as the Declaration of the Rights of the Child, the Convention on the Rights of the Child contains a clearly defined restriction on the beginning of the child's possession of rights and the beginning of their effect at the moment of his/her birth as the moment of beginning of the possession of the right – only concerning the right of the child to a name and the right of the child to a nationality, as well as the right to know their parents and their care (Article 7, clause 1). There are no other restrictions on the rights of the child in the part relating to the beginning of their occurrence and the beginning of their effect before the moment of the child's birth in the Convention on the Rights of the Child, indicating only the upper age limit of recognition of a person as a child (Article 1). And it is in the light of this provision of the Preamble that one should interpret Article 6, clause 1, of the said Convention on the duty of States Parties to recognize that "every child has the inherent right to life", reasonably extending the concept of "every child" to the child before his/her birth as well.

We consider as essential that, in accordance with Article 6, clause 2, of the Convention on the Rights of the Child, Member States to the maximum extent as possible ensure "the survival of the child". Consideration of this norm in conjunction with the provisions of the preamble of this Convention on ensuring the appropriate legal protection of the child, before as well as after birth, allows revealing its legal content, according to which the states are obliged to ensure the child's survival before as well as after his/her birth. Thus, this element of the child's legal status at the prenatal stage of development, namely, the state's obligation to ensure the survival of the child, is included to the composition guarantees of the right of such child to life.

Thus, the above international acts on the rights of the child (basic international acts on the rights of the child, most legally significant in the general scope of international human rights acts) guarantee the rights of the child to life, health protection and development, which is

[29] Конвенция о правах ребёнка / Принята Резолюцией № 44/25 Генеральной Ассамблеи ООН от 20.11.1989 // <http://www.un.org/ru/documents/decl_conv/conventions/childcon.shtml>.

fundamentally important before the child's birth as well. At the same time, the minimum (lower) time (age) limit – the moment when the child's right to life, health protection and human dignity has appeared and become effective – has not been established in the international documents mentioned.

It should be noted that in the International Covenant on Civil and Political Rights on 16.12.1966[30], Article 6, clause 1 of which enshrined the inherent right of every person to life, the very moment of the occurrence and coming into force of the human right to life has not been indicated. The same is in the European Convention for the Protection of Human Rights and Fundamental Freedoms on 04.11.1950[31], in the provisions guaranteeing the right to life (Article 2, clause 1), there is no indication of the moment from which the emergence of the right to life in a person is recognized.

These and other international legal acts do not contain provisions based on which one could interpret legitimately convincing the human right to life in such a way that the moment of the emergence of this human right should be recognized not earlier than from the moment of person's birth. Thus, in accordance with Article 1, clause 6, of the European Convention on the Exercise of Children's Rights on 25.01.1996[32], nothing prevents the parties from applying more favorable provisions for the support and exercise of children's rights. Provided that according to the established common understanding of human life, it begins with conception, and the human birth is only a stage of life, and the necessity to provide safeguard and legal protection of human life essentially includes the child at the prenatal stage of development, we believe, that states have the right to take measures of the legal protection and safeguard of such child that are more intensive than it is guaranteed at the international level.

In addition, there are numerous examples of international human rights treaties that directly consolidate or express the recognition of the emergence of the human right to life and the beginning of the protection of this right from the moment of conception. Thus, in accordance with

[30] Международный пакт о гражданских и политических правах / Принят Резолюцией № 2200 А (XXI) Генеральной Ассамблеи ООН от 16.12.1966 // <http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml>.

[31] Конвенция о защите прав человека и основных свобод, измененная и дополненная Протоколом № 11 // <http://conventions.coe.int/treaty/rus/treaties/html/005.htm>.

[32] Европейская конвенция об осуществлении прав детей от 25.01.1996 // <http://conventions.coe.int/Treaty/rus/Treaties/Html/160.htm>.

Article 18 of the "Research on Embryos in vitro" of The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine – the Convention on Human Rights and Biomedicine on 04.04.1997[33], "If conducting research on embryos In vitro permitted by law, the law shall ensure adequate protection of the embryo. Creation of human embryos for research purposes is prohibited".

In a number of documents of international organizations (documents of the so-called "soft" international law), such an approach is doctrinally supported and its value grounds are set forth. Thus, Articles 1-4 of the Declaration on 25.03.2011, "The Articles of San José"[34] state that the beginning of a new human life at the moment of conception is the scientifically established fact as well as that "every human life is an inseparable whole that begins at the moment of conception and passes various stages to death."

In science, these stages are given different names, such as "zygote", "blastocyte", "embryo", "fetus", "infant", "child", "adolescent", and "adult". It does not change scientific consensus, according to which each individual is a living representative of the human race at every moment of his development. Every unborn child is a person by nature from the moment of his conception. All human beings, as representatives of the human race, have the right to recognize their inherent dignity and to protect their inalienable rights. This is recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights and other international treaties".

Paragraph 5 of the Recommendation of the Parliamentary Assembly of the Council of Europe № 1046 (1986) on 24.09.1986, "On the use of human embryos and fetuses for diagnostic, medical, scientific, industrial and commercial purposes"[35] recognizes the objective fact that "from the fertilization of the egg, human life is developing continuously", so it is

[33] Convention pour la protection des Droits de l'Homme et de la dignité de l'être humain à l'égard des applications de la biologie et de la médecine: Convention sur les Droits de l'Homme et la biomédecine Oviedo, 4.IV.1997] // <http://conventions.coe.int/Treaty/fr/Treaties/html/164.htm>.

[34] Les Articles de San Jose // <http://www.sanjosearticles.com/?page_id=199&lang=fr>; Статьи Сан-Хосе // <http://www.sanjosearticles.com/?page_id=638&lang=ru>.

[35] Recommandation de l'Assemblée Parlementaire du Conseil de l'Europe № 1046 (1986) du 24 septembre 1986 «Utilisation d'embryons et foetus humains à des fins diagnostiques, thérapeutiques, scientifiques, industrielles et commerciales» // <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15080&lang=fr>;<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=15080&lang=fr>.

recognized that the beginning of human life should be considered from the moment of fertilization of the egg.

The necessity of protecting human rights and human dignity with respect to embryos, the necessity to respect the human dignity of human embryos, and the necessity for a certain legal protection of the human embryo from the moment of fertilization of the egg are discussed in clauses 1, 3 and 6 of the Recommendation of the Parliamentary Assembly of the Council of Europe № 1100 (1989) on 02.02.1989 "The Use of Human Embryos and Fetus in Scientific Research"[36].

The constitutional guarantees of the protection of the rights and dignity of children at the prenatal stage of development are enshrined in a number of constitutions of the states in which they are reasonably included in the sections on human rights. In particular, Article II of the chapter "Freedom and Responsibility" of the Constitution of Hungary on 25.04.2011[37] states: "Human dignity is inviolable. Everyone has the right to life and human dignity, the life of the fetus is protected from the moment of conception". Clause 1 § 3 of the Hungarian Law on 23.12.2011 "On the Protection of Families"[38] establishes guarantees for the protection and respect of the child's life from the moment of conception. According to the preamble of the Hungarian Law on 17.12.1992 "On the Protection of the Life of the Human Fetus" (with subsequent amendments)[39],"the life of the human fetus, starting from conception, deserves respect and protection." Pursuant to sub-clause (c), clause 3 § 2 of the Law of Hungary mentioned, the state ensures the protection of the human fetus.

Even if the positions (views) relative to the moment of the beginning of life differ among scholars, the necessity for legal (including criminal legal) protection of human embryos does not cause any objections. Thus, the Criminal Code of France contains the section on the human embryo protection, which includes Article 511-15. "The purchase of human embryos on payment terms in any form ..., the provision of mediation services to facilitate the purchase of human embryos on payment terms in

[36] Recommandation de l'Assemblée Parlementaire du Conseil de l'Europe № 1100 (1989) du 02.02.1989 «L'utilisation des embryons et foetus humains dans la recherche scientifique» // <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-fr.asp?fileid=15134&lang=fr>.

[37] Magyarország Alaptörvénye // <http://www.njt.hu/cgi_bin/njt_doc.cgi?docid=140968>.

[38] 2011. Évi CCXI. Törvény a családok védelméről // <http://njt.hu/cgi_bin/njt_doc.cgi?docid=143096.245265>.

[39] 1992. Évi LXXIX. Törvény a magzati élet védelméről // <http://njt.hu/cgi_bin/njt_doc.cgi?docid=17433.244667>.

any form, or the paid transfer of human embryos to third parties", Article 511-16. "Receipt of human embryos without observance of the conditions provided by Articles L. 152-4 and L. 152-5 of the Code of Laws on Health", Article 511-17. "The implementation of conception in vitro (extracorporeal, i.e. carried out outside the maternal body, fertilization of the female egg, after which the embryo is transferred to the female's uterine cavity) of human embryos for industrial or commercial purposes". Use of human embryos for industrial or commercial purposes (Article 511-18). The code contains as well Article 511-19. "Studying an embryo or experimenting with it", Article 511-20. "Prenatal diagnosis without permission", Article 511-21. "Failure to comply with the provisions of Article L. 162-17 of the Code of Laws on Health related to pre-implantation diagnosis", Article 511-22. "Conduct of medical care activities without permission, Article 511-23. "The disclosure of personal information, which allows the couple to detect the couple, who abandoned embryo and the couple, who accepted it at the same time, Article 511-24. "Conduct of medical care activities for purposes other than those specified in Article L-152-2 of the Code of Laws on Health, Article 511-25. "Implementation of the embryo transplantation under the procedure established by Article L 152-5 of the Code of Laws on Health, without clarifying the test results required for the implementation of the above-mentioned article, for the detection of infectious diseases", etc.

CONCLUSIONS

The analysis conducted gives grounds to make a conclusion that the declarations of legal protection of the child at the prenatal stage of development are well-formulated in legislation of many countries of the EU. In their legislation many states have established the measures of the protection of child's right to life and health protection for children at the prenatal stage of development, including special measures for pregnant women's protection. Special criminal legal protection of the child at the prenatal stage of development is established, first of all, by consolidating the measures in criminal legislation aimed at increased protection of the life and health of the pregnant women from violent infringements.

Thus, the solution for the problem of legal consolidation of the moment in relation to the beginning of life protection should be found in the light of foreign, first of all, European legislative experience. In particular, under the legislation of most EU states, person's life begins at

the moment of his conception, and the child at the prenatal stage of development before his birth has a certain legal status that gives him the right to protection by the very fact of his existence, including the fact of being in physical (biological) relations with his mother.

SUMMARY

The article deals with the important and controversial issues of determining the initial moment of person's life and his death in both law science and medicine. The reason for the problematic nature of this issue is the fact that both processes of birth and death are quite long, generating different points of view of scholars, both in the field of law and in the field of medicine. The works of national scientists involved in the development of this issue and the practice of the ECHR were analyzed. The theoretical provisions concerning the initial moment of human life were investigated and the value of the initial moment of human life for the criminal legislation was determined. As a result of the study, some proposals were made to improve Ukrainian legislation on the protection of human right to life.

Key words: initial moment, life, the right to life, crime, a person, birth, the end of life, death.

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49. Sentencia del Tribunal Constitucional de España № 53/1985 de 11 de abril de 1985 // <http://hj.tribunalconstitucional.es/HJ/pt-BR/Resolucion/Show/SENTENCIA/1985/53>.

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PUBLIC MONEY AS AN OBJECT OF CRITICAL INFRASTRUCTURE: THEORETICAL AND PRACTICAL ASPECT

Zadyraka N. Yu.

INTRODUCTION

Taking into account national trends of redistribution of a public product, a legal regime of public money appears to be one of key regulators of economic growth and public interest satisfaction as for national revenue growth.

According to the current legislation, one of the determinant objects of critical infrastructure is public finances being strategically significant for the functioning of economy and state safety, society and people[1].

Studying the legal regime of public money we should mention that in practice there are many problems connected with the use of public property of such type. In particular, state police of resource limitation during public management and budget administration of money is not effective and high-qualitative enough; the intradepartmental information exchange is not well-organized; computerization of work with large volume data has not been finished; there are high corruption risks.

The drawbacks of public administration of public money given above can be seen when analyzing information system functioning as well the modules of public money use such as “E-data”, “Prozorro”, an electronic cabinet of tax payer, a single state web-portal of open access data, a single state register of people’s declarations, authorized to execute state or local self-government functions, the System of electronic administration of VAT etc.

1. Essential Features and Peculiarities of Administrative-Legal Regime of Public Property

[1] Про затвердження Порядку формування переліку інформаційно-телекомунікаційних систем об’єктів критичної інфраструктури держави: Постанова Кабінету Міністрів України від 23.08.2016 р. № 563. *Офіційний вісник України*. 2016. № 69 .С. 50. Ст. 2332. Код акту 82988/2016.

In essential meaning, the legal regime of public property can be represented as an integral part of the state functions related to management. Such regime is based on the general principles, methods and forms of public management regarding the activities of competent public administration subjects and their officials in the interaction with private law subjects, as well as between themselves in the realization of their official duties, the regulation of a variety of objects and processes[2]. Accordingly, the peculiarities of the public property legal regime are determined by the content of tasks faced by the state and local self-government as well as by peculiarities of the public administration activities within their competence, etc.

J. Wendel considers these properties through the prism of common law of public power, which includes four basic principles: the connection of public administration with the law; a special procedure for creation and implementation of tools for public administration activity; administrative justice as a form of resolving disputes and conflicts; liability of public administration for damages or other offences[3].

The administrative legal nature of the public property legal regime appears as interaction of legal boundaries and appropriate institutional and functional tool that would guarantee a possibility for individuals to exercise their rights and obligations in relation to public property as well as specifics of public administration functioning in the specified domain which would reflect axiological features during the legal protection of public property. In addition, administrative and legal features of the above mentioned regime can be considered through organizational-managerial procedures for guaranteeing national security and law order.

We should specify that public property legal regime is the specific order of its subjects' functioning based on administrative law norms and aimed at overcoming negative phenomena in a relevant domain of public management[4]. Therefore, it is about axiological manifestation of administrative procedure optimization at implementing legal regimes and in certain types of public property.

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[2] Административное право: учеб. для вузов. 3-е изд., пересмотр. и доп. / Д.Н. Бахрах, Б.В. Россинский, Ю.Н. Старилов. Москва: Норма, 2007. 816 с.С. 482

[3] Ведель Ж. Административное право Франции / пер. с франц. Л.М. Энтина. Москва: Прогресс, 1973. 512 с. С. 65.

[4] Адміністративне право України. Академічний курс: підруч. Т. 1. Загальна частина / заред. В.Б. Авер'янов. Київ: Видавництво «Юридична думка», 2004. 584 с.

As O. O. Krestianov explains, centrally established tools of public administration through the imperative method of legal influence establish the procedure for the implementation of administrative-legal relations, in which traditionally a power subject and a subordinated person are in legally unequal position[5]. In fact, such position was dominant and acceptable until the institutionalization of the current state of legal opinion development on public property and selection of criteria for the formation of public property institution in the system of Common administrative law. Nevertheless, now it is worth supporting the doctrinal views where particular attention is paid to the specific nature of activity of subjects of law in various domains of state and public life, regulated and aimed at their strictly purposeful and functional activity in the area where additional funds are required to support the state system[6]. Such thesis indicates a static approach to the public property legal regime dealing with implementation of specific regulation (for certain types of public property), combining the tools of public administration activities, in particular, organization-oriented ones.

Along with that, taking into account the latest trends of public delegation of powers in the public administration field, the possibility of active and large-scale involvement of private law subjects in public property use, primarily at the local level, is not excluded at the present time. The legal regime of such public property, accordingly, is the normative defined rules of private law subjects' conduct, as well as the procedure for exercise of their powers under the specific conditions (situations) of ensuring and supporting the sovereignty and defense of the state, the interests of security and public order, specially created for this goal by public administration subjects[7].

The provisions formulated, first of all, are relevant to the implementation of the border regime activity in the exercise of public property legal protection. The interpretation of the public property legal regime through combining the tools of public administration, determined by imperative and dispositive methods of legal regulation, taking into account the national specificity and the trans-boundary nature of subjects'

[5] Крестьянинов А.А. Местотаможенныхрежимов в системеадминистративно-правовыхрежимов. Проблемизаконності. 1999. Вип. 37. С. 90–96. С. 91.

[6] Тихомиров Ю.А. Административное право и процесс: полный курс. Москва: Изд-е г-на Тихомирова М.Ю., 2001. 652 с. С. 325.

[7] Розанов И.С. Административно-правовые режимы по законодательству Российской Федерации, их назначение и структура. *Государство и право*. 1996. № 9. С. 84–91. С. 85

legal status in these legal relations, can be considered as the most acceptable.

The administrative-legal aspect of the public property legal regime is determined through the objective features of property, established at the normative level and implemented by using legal tools.

It is these aspects of the relevant legal regime that determine the outcomes of public administration tool influence on public relations in the legal protection of public property, which are typical of this administrative law institution and determine its implementation.

As a result, the doctrine formed an approach according to which the legal regime, in particular, of public property is regarded as a kind of social regime[8]. According to I. Voronina, legal values serve as the core of law axiom field; they are in its basis and appear as tools for interpretation of legal reality, playing a system-forming role in implementing a structured, logical, holistic and effective model of public administration[9]. This is due to the fact the connection of legal regimes with large-scale social processes reveals when realizing the legal regimes of certain types of public property. It makes possible to effectively perform the tasks assigned to public administration in the implementation of public administration in a public property field. In addition, it needs to be clarified that economic, legal and social features of the legal regime of public property are changing phenomena being in a state of constant interaction and development. As a result, public interests and needs of participants in state and public life are met with the use of public property at the individual, group and general social levels through the mechanism of administrative-legal support and administrative procedures.

That is why the public property legal regime can be considered within the limits of social regime implemented in the system of legal measures and means defining specific interaction of permissions, prohibitions and positive liabilities. This legal category is a special, expanded block within the framework of legal tools extending its effect to the whole range of legal means which rational use in solving various specific needs, primarily, concerns the definition of appropriate legal

[8] Мінка Т.П. Онтологічна характеристика правового режиму.*Право і суспільство.* 2012. № 3. С. 123–127. С. 126.

[9] Вороніна І. Соціально-правові цінності в системі соціально-політичного управління суспільством. Jurnalul juridicnaţional: teorieşipractică. 2016. № 1. Ч. 1. С. 5–8. С. 6, 8.

regime for the public property legal protection, taking into account the essence of the latter.

The concept of "public property legal regime" can not be equated with the concept of a mechanism of legal provision and regulation. The legal regime is mostly a meaningful characteristic and is carried out through the above-mentioned mechanism, which is a general procedure, the process of action and exercise of the right through legal regulation[10]. Therefore, we fully support the doctrinal approach according to which such a mechanism can fully function through a holistic range of its constituent elements, namely: legal norms, legal relations, acts of exercise of rights and obligations[11]. Taking into account that the legal regime studied is implemented in normatively regulated relations in the field of public property use, the efficiency of its functioning depends on the proper "technology" and logical justification of relevant administrative procedures. The mechanism of administrative-legal support, regulation should determine the ways of implementation of regulatory measures in public administration of public property relations with the use of appropriate tools of public administration within the framework of specific administrative procedures.

In fact, the legal regime of public property through the mechanism of administrative law, regulation a priori includes the corresponding norms of law, based on the appropriate rules of conduct[12]. Thus, without legal norms, this legal regime can not be practically implemented, which creates conditions for the dialectical interaction of these legal categories. The public property legal regime as a manifestation of normative law can not be based solely on the object features of certain types of public property, but must establish the conduct, associated with them, of the subjects of relations in the field of public property use. In fact, depending on its goals and tasks, such legal regime of public property includes imperative – dispositive nature of fundamental legal regulators, in particular, legal norms.

[10] Мінка Т.П. Онтологічна характеристика правового режиму. *Право і суспільство*. 2012. № 3. С. 123–127. С. 126.

[11] Кравчук О.О. Управління державною власністю: адміністративно-правові засади: монографія. Київ: НТУУ «КПІ», 2013. 444 с. С. 102.

[12] Вакарюк Л. Норма права та правовий режим: співвідношення понять. *Підприємництво, господарство і право*. 2017. № 1. С. 171–176. С. 174.

Taking into account the described features of the public property legal regime, the following should be attributed to such features: content and purpose, and also the structure of public property; the field of implementation and type of activities, in particular, the grounds for emergence and termination of the legal regime; the form of ownership and legal titles, in particular, the limits of their implementation by third parties; specific features; subjective dimension. In addition, we should specify that it is such set of properties of the public property legal regime that is based on the profile legal group and is determined by the ideological specificity of public management when it is used.

Consideration and study of the public property legal regime should be carried out in the aspect of influence of a law mechanism on public relations, but not on the management of human activity and its processes, etc. In this regard, the study of "legal regime" concept should be approached systematically, taking into account the diversity, dimension, "atmosphere" of law in which all elements of the legal system function and the unity of all its various elements reflecting the nature of law through the prism of its ontological connection with other elements of the legal system (legal principles, norms of law, legal relations, etc.) is ensured[13]. In fact, the legal regime of public property is a component of a state regime on the basis of strict orderliness and systematic legal norms. The relevant legal category is characterized by multiple meaning, namely: a kind of "multi-layers" of adjacent legal categories and domination of such elements as the supremacy of law, the regime of public law order and disciplinary regime. The legal regime of public property, above all, is embodied in legal approaches, legal regulatory methodology, law-making and law-enforcement processes, and the legal consciousness of society. Therefore, one of the important indicators of such legal regime quality is legitimacy.

Individualization of the legal regime of public property is embodied in its essential features and in subject composition.

The legal regime is specified by using the concept of "legal regulation procedure", provided by a special combination of methods involved in its implementation. The relevant category is interpreted as a complex of legal means combined in a single structure, which ensures

[13] Мінка Т.П. Онтологічна характеристика правового режиму. *Право і суспільство*. 2012. № 3. С. 123–127. С. 126.

their effective use in solving special problems in order to choose the optimal legal solution for the task in question in accordance with the specifics of this task and the content of the public relations regulated[14]. In view of the above mentioned, it is necessary to take into account the organizational and legal means within the legal regime of public property as well, since the basis of such regime is not purely general permissions and prohibitions by nature, but based on them kinds (types) of legal regulation.

That is why the public property legal regime can be interpreted as generally permissive (in the context of general use) and actually permissive (in general, under the procedure).

At the same time, the current political and legal Ukrainian realities regarding the Operation of the joint forces in temporarily occupied territories in Donetsk and Luhansk regions lead to the formation of an additional set of peculiarities of the public property legal regime. So, according to S.O. Kuznychenko, in this aspect, it is about the necessity of priority consideration of the most severe extreme administrative-legal regime of a "martial law" as a special guarantee of ensuring the public interests of the state, society, a person both at the national level and at certain administrative-territorial entities[15]. The decisive criterion for democratization of the legal regime of public property is the principle of national sovereignty and legal provision of people's sovereignty through acts of direct expression of the will of private law subjects, first of all, citizens[16]. The principle of national sovereignty and legal provision of people's power through acts of direct expression of private law subjects can be considered a decisive criterion for democratization of the legal regime of public property; it makes usurpation of public authority and/or its concentration within the body with monopoly or dominant position at the market impossible.

No less important to realize the impossibility of "mitigating" the administrative-legal regime of martial law in view of the lack of

[14] Общие дозволения и общие запреты в советском праве / С.С. Алексеев ; Ред.: Л.А. Плеханова. Москва: Юрид. лит., 1989. 288 с.; Алексеев С.С. Теория права. Москва: Издательство БЕК, 1995. 320 с. С. 185, 243.

[15] Кузніченко С.О. Умови, порядок уведення та скасування правового режиму воєнного стану. *Адміністративне право і процес*. 2014. № 3(9). С. 253–263. С. 259.

[16] Дроботова Т. Правові ознаки демократичного державно-правового режиму: актуальні питання систематизації. *Юридична Україна*. 2010. № 1. С. 34–40. С. 36; Мурашин Г.О. Акти безпосереднього народовладдя як джерела права України. *Правова держава*. 2007. Вип. 18. С. 156–162. С. 159; Pennock J.R. Democratic Political Theory. Princeton: Princeton U.P., 1979. 598 p. C. 441–445.

appropriate procedures, so the legal regime of public property should meet the full range of legal requirements in the framework of implementation of this most strict legal regime. The peculiarities of emergence, change and termination of the specified legal relations are established through the discretion of public administration subjects authorized for such acts at the constitutional level. According to Clause 9, Part 1 of Art. 85; Clauses 19, 20, Part 1, Art. 106 of the Constitution of Ukraine, Art. 4, 11 of the Law of Ukraine "On the Fight against Terrorism", Art. 3, 5, 8 of the Law of Ukraine "On the Legal Regime of Martial Law" such subjects include: the Verkhovna Rada of Ukraine, the President of Ukraine, the National Security and Defense Council of Ukraine, the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the Ministry of Defense of Ukraine, specialized central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, local self-government bodies, military commands, military administrations, etc.[17].

In addition, it should be clarified that the regulatory nature of the public property legal regime determines the constituent elements and structure of such regime, reflecting the dynamic side of legal relations in the use and legal protection of public property. This can be realized through the modification of elements of the public property legal regime: legal methods and means, phenomena, etc. (norms of law, legal facts, legal ideology, legal awareness, legal principles, etc.). The legal regime mentioned highlights the external form of emergence, change, termination of the relevant public relations through the interaction of legal tools, methods of legal regulation. This ensures the proper dynamics of the public relations mentioned and determines the purpose of regulating the legal protection of public property and satisfying the public interests of participants in public relations in its use.

According to T.P. Minka, the elements of the public property legal regime are the following: objectified field of law validity is plurality of public relations defined in the social space, which constitute the subject of legal regulation; systematic, interconnected by logical links, a set of ways, methods and types of regulatory action of law to a certain set of public

[17] 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.; Про боротьбу з тероризмом: Закон України від 20.03.2003 р. № 638-IV: із зм. і доп. станом на 07.05.2016 р. *Відомості Верховної Ради України*. 2003. № 25. Ст. 180.; Про правовий режим воєнного стану: Закон України від 12.05.2015 р. № 389-VIII: із зм. і доп. станомна 09.07.2016 р. *Відомості Верховної Ради України*. 2015. № 28. Ст. 250.

relations; certain socially significant result of law force, which is the purpose of legal regulation[18].

In the field of legal regime implementation and in certain types of public property, it is necessary to distinguish such elements of the legal regime as an object (public property), subjects (public administration, subjects of private law – users), methods of legal regulation (imperative-dispositive), the mechanism of administrative-legal support (normative regulation, legal relations, acts of law exercise and enforcement). The relevant elements of the public property legal regime reflect the meaningful aspects of legal protection of the latter, as well as its institutional and functional features.

It can be stated that the ontological, gnoseological and axiological dimensions of institutional-functional features of the public property legal regime allow ensuring the implementation of a normative component of the public property legal regime. The above mentioned legal category, although having some static features, is a priori dynamic and is determined by the current state of political, economic, social and other situations in the country. As a result, an appropriate regulatory paradigm for the use of certain types of public property is being formed, taking into account the trans-boundary and national dimensions of such legal regime implementation.

2. Public Money as an Object of Critical Infrastructure

We suggest starting the scientific analysis of public money legal regime with the consideration of the fact that it is distinguished by openness and dynamics of organizational-managerial and social-economic connections between its elements. This state of things is determined by the fact that public money is a legal category that is constantly developing under the conditions of volatility of financial resources, correlation of income and expenses, changes in demand and supply in the market conditions of innovative economy formation. Such volatility of the public money legal regime also determines its flexibility and diversity. Considering the national trends of redistribution of the social product, the legal regime mentioned appears as one of the key regulators of economic

[18] Мінка Т.П. Правовий режим у теорії адміністративного права. *Адміністративне право і процес*. 2013. № 2 (4). С. 23–29. С. 26.

development and satisfaction of public interest in the national income growth.

At the same time, one should pay attention to the fact that in European countries the public money legal regime is regulated at the constitutional level. In particular, the Constitution of the Federal Republic of Germany presents a section on "Finance" on income and expenses of budgets[19]. In the Constitution of Poland there is a certain section "Public Finances"[20]. Article 119 of the Constitution of Italy deals with public money of the state, provinces and communes[21]. Article 70 of the Constitution of France defines the procedure of public money use as for cooperation with the state, the Parliament and the Economic, Social and Ecologic Council[22].

Although the Constitution of Ukraine enshrines legal category of "finances"[23] (Art. 140 of the Basic Law), but the laws provide the definition of concepts of state finances and public money (public finances). So, speaking on this subject, it is necessary to refer to the provisions of Clause 2 of Part 1 of Art. 1 of the Law of Ukraine "On Openness of Use of Public Funds"[24], Section 2 of the "Strategy of Reforming the Public Finance Management System"[25], Clause 1, 5 of Section 3 of the Strategy for Sustainable Development "Ukraine-2020"[26] Clauses 90, 95, 156 of Plan of measures for its realization[27]. In fact, legal categories used in the provisions given are associated with the money

[19] Конституція Федеративної Республіки Німеччини. URL: http://legalportal.am/download/constitutions/83ru.pdf (датазвернення: 02.05.2019.).

[20] Конституція Польської Республіки. URL: http://blog.vladey.com.ua/konstituciya-polsko%D1%97-respubliki-ukra%D1%97nskoyu-movoyu/ (датазвернення: 02.05.2019.).

[21] Конституція Італії. URL: http://lawers-ssu.narod.ru/subjects/constzs/italy.htm (дата звернення: 02.05.2019.).

[22] Конституція Франції. URL: http://www.conseil-constitutionnel.fr/conseilconstitutionnel/root/bankmm/constitution/constitutionrusseversionaout2009.pdf (датазвернення: 02.05.2019).

[23] 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.

[24] Про відкритість використання публічних коштів: Закон України від 11.02.2015 р. № 183-VIII: із зм. і доп. станом на 30.09.2015 р. *Відомості Верховної Ради України*. 2015. № 16. С. 921.Ст. 109.

[25] Просхвалення Стратегії реформування системи управління державними фінансами на 2017-2020 роки: Розпорядження Кабінету Міністрів України № 142-р від 08.02.2017 р. *Офіційний вісник України*. 2017. № 23. С. 61.Ст. 659.

[26] Про Стратегію сталого розвитку «Україна – 2020»:Указ Президента України № 5/2015 від 12.01.2015 р. *Офіційний вісник України*. 2015. № 4. С. 8. Ст. 67.

[27] Про затвердження плану заходів з виконання Програми діяльності Кабінету Міністрів України та Стратегії сталого розвитку «Україна-2020» у 2015 році: Розпорядження Кабінету Міністрів України від 04.03.2015 р. № 213-р: із зм. і доп. станомна 06.07.2016 р. URL: http://zakon2.rada.gov.ua/laws/show/213-2015-р (дата звернення: 02.05.2019.).

accumulated in the certain funds, the rights for which are owned by the state and territorial community.

It can be stated that public money is associated with the categories of public administration using financial resources to meet public interest, public needs. In fact, it is about public financial capital: funds of the state budget of Ukraine and local budgets, credit resources, funds of state banks and public law funds, state special purpose funds, as well as public money received on the results of the economic activity of private law entities. As for doctrinal interpretation of public money, then this concept is considered comprehensively:

- As a subject of legal regulation – socio-economic relations appearing in the process of formation, distribution (redistribution) and use[28] of public centralized and decentralized money of funds required for the functioning of public administration subjects[29];
- As an object of legal relations – a tool of public administration at carrying out its activity[30]; an object of financial activity admitted to economic turnover[31]; monetary funds of the state, state-territorial and municipal entities, enterprises, institutions, organizations and other subjects of economic activity, used for material provision of society needs and production development[32].

Speaking about the public money legal regime it is worth paying attention to controversial aspects of use of relevant public finances in judicial practice. Thus, judicial cases, considered and resolved within administrative jurisdiction, are connected to, primarily, controversial issues of money placement and inaction of public law funds. We can give as an example the cassation proceedings opened by the High Administrative Court of Ukraine, as for:

- The issue of an unlawful administrative act and not placement of public funds according to the claims of a private law subject (additional liability company "Zhytlobud-2") to authorized public administration subjects, legal entities of public law and an official of a public law fund,

[28] Бардаш С.В., Баранюк Ю.Р. Поняття і склад публічних фінансів як об'єкта державного фінансового аудита. *Науковий вісник Ужгородського національного університету*. 2016. Вип. 6(1). С. 34–37 (Серія: Міжнародні економічні відносини та світове господарство). С. 36.

[29] Воронова Л.К. Фінансове право України: підруч. Київ: Прецедент: Моя книга, 2006.448 с. С. 7.

[30] Заверуха О.Б. Бюджетні повноваження органів місцевого самоврядування в Україні: дис. … канд. юрид. наук: 12.00.07 / Чернівецький держ. ун-т ім. Ю. Федьковича. Чернівці, 2001. 236 с. С. 19.

[31] Головенко О. Теоретичні засади застосування категорії «публічні фінанси» у фінансовому праві. *Теорія і практика інтелектуальної власності*. 2011. № 3. С. 73–78. С. 75.

[32] Сисуари В.В. Финансы как объект правового регулирования. *Финансовое право*. 2005. № 3. С. 4–5.

in particular, with the participation of third parties (the Department of state registration of property rights to real estate of Kharkiv city department of justice, Department of registration of Kharkiv city council, state enterprise "National Information Systems", an official of the Deposit Guarantee Fund for Individuals for the liquidation of Public Joint-Stock Company "BANK National Credit", with the participation of third parties – Limited Liability Company "KM-Holding", Public Joint Stock Companies "Volynbakalia", "Company "Rise")[33];

- Unlawful inaction of the authorized person of public law fund in the aspect of not approval of a general register of depositors, who have the right to have a compensation of funds on their deposits, not inclusion to the list of depositors of a person having the powers to have compensation of funds, as well as inaction concerning public money payment in the amount established – in particular, concerning inaction of the official of the Deposit Guarantee Fund of Individuals in the part of money compensation on deposits of Public Joint Stock Company "European Gas Bank" by funds of the public law fund mentioned under the agreement on bank deposit (account)[34].

Evaluating the above mentioned, we would like to emphasize that in order to resolve disputes when using public money as public property, it is necessary to refer to three basic theories of economic nature: the theory of public choice in a democratic environment (J. Buchanan); the theory of social welfare, the decisive meaning of which states that changes in the financial domain are appropriate only when the welfare of individual social groups improves without the deterioration of others (V. Pareto); the theory of fiscal exchange "taxes-good" (K. Wicksell, E. Lindahl, J. Buchanan)[35].

Optimization of the process of legal regime implementation of public money should relate to the normative, institutional, organizational and technological principles of modernization of public management. This, in turn, means improving the legal grounds, in particular, at the

[33] Ухвала Вищого адміністративного суду України від 19.07.2016 р. № К/800/16402/16. URL: http://reyestr.court.gov.ua/Review/59202527 (дата звернення: 02.05.2019.); Ухвала Вищого адміністративного суду України від 24.01.2017 р. № К/800/16402/16, К/800/17208/16. URL: http://reyestr.court.gov.ua/Review/64507344 (дата звернення: 02.05.2019.).

[34] Ухвала Вищого адміністративного суду України від 03.03.2016 р. № К/800/46854/15. URL: http://reyestr.court.gov.ua/Review/56645725 (дата звернення: 02.05.2019.).

[35] Пахоляк У. Шляхи покращення управління публічними фінансами в сучасних умовах. *Матеріали міжнародної науково-практичної конференції студентів і молодих учених «Соціально-економічні аспекти розвитку економіки»*, 27-28 квітня 2017 р. Т.: ТНТУ, 2017. С. 32–35. С. 32.

constitutional level in relation to the provisions on public finances, in the use of certain type of public property as for the development of strategic standardization and methodological procedural dimension, macroeconomic forecasting and medium-term planning; institutional optimization for strengthening cooperation between public administration subjects, as well as with private law subjects, which is ensured, in particular, by monitoring and auditing the effectiveness of the public money use; organizational changes in conducting information and education campaigns for relevant civil servants and civil society representatives; technological modernization of information systems, analytical modules, portals, services of public money management, strengthening of software and technical security.

The outcomes of the described ways of improving the public money legal regime can be clearly seen through the public management of the use of the relevant type of public property. In addition, as pointed out by P. Schroeder, it is necessary to distinguish the concept of public management as a regulatory activity of public administration from the category of "administration", which manifests itself in the field of public finance[36]. Thus, the legal regime of public money should be based on the following administrative and financial features: the purposefulness of activities of public administration subjects, expressed in the provision of goal achievement in the field of use of public money, in particular through a single web-portal (axiological orientation); the secondary nature of legislative activity, the lawfulness on the basis and for the implementation of legislative norms in order to fulfill the requirements of law; regulation of competence, expressed in the presence of procedural and legal norms (public-procedural regulatory basis); regular, permanent nature of activity (persistency); the existence of authority in the subjects of public administration; management with the purpose of realization of the state financial policy and strengthening of discipline (managerial dimension)[37]. It is the goals and objectives of the public money legal regime that determine the dimension of specific forms of public management in the use of public property of the type mentioned.

[36] Шрьодер П. Нове публічне адміністрування, або як досягнути ефективного врядування?. Київ: Вид-во «Заповіт», 2008. 76 с.

[37] Клімова С.М. Адміністрування як правова форма управління у сфері публічних фінансів. *Науковий вісник Херсонського державного університету*. 2016. Вип. 5. Т. 2. С. 52–55. С. 55.

It is worth noting that it is essential to develop effective and efficient legislation to implement the legal regime mentioned above. First of all, it is about the need of procedural component consolidation of normative-legal framework for implementation of the state policy on the public money use. In particular, the main focus should be on public financial as well as administrative procedures in the field of public management and administration of such public property. Therefore, it is necessary to regulate this area in a comprehensive manner in relation to most of the acts performed by public administration subjects, first of all, in terms of unification of the regulatory basis for the implementation of administrative procedures for public management in the use of public money, budget administration.

CONCLUSIONS

Carrying out the legal protection of public property, the legal regime substantially and contextually covers the subject, specific interaction of legal methods and tools of public administration activity or the implementation of legal procedures in general, as well as the purpose of legal regulation. Such legal regime is systematic, opened, multilayered and has a variable internal structure.

It has been established that there are general and specific grounds for the emergence of a public property legal regime. Thus, the special grounds are connected with the emergence of legal facts in relation to the exceptional ability of public administration subjects to acquire rights to public property. Instead, all other grounds have a general nature.

The factors of influence on the process of termination of public property legal regime by institutional and functional criteria in the general dimension, as well as on the basis of legal facts (special grounds for termination of the corresponding legal regime) are specified.

The necessity of creating a single legal framework for the effective and transparent implementation of the public money legal regime, first of all, on the basis of digitalization of procedural-procedural dimension through a single portal for the use of public money is justified. Not less important in this meaning is to establish the mechanism and forms of activity of relevant public administration subjects and private law subjects regarding the planned and actual use of this type of public property.

It is emphasized that the public money legal regime provides for the relative independence of state and municipal finances providing the unity of the public administration system by the national financial and credit, monetary system. Such public money has, first of all, a strong social purpose within budgets, extra-budgetary and decentralized funds.

As a result, state and social public interests of the national level are met in parallel with the territorial public interest in creating conditions for the sustainable development of civil society and the state by taking into account the needs of public management and supervision through the generalization of personal and group interests within the financial system, in particular through such a tool of electronic democracy, as public budgets (participation budgets).

SUMMARY

The article deals with the issues connected with the use of public money as objects of critical infrastructure. In particular, the inefficiency of state policy in public management and public administration of public money, as well as the imperfection of intra-departmental exchange of information and the incomplete computerization of work with large volumes of data, is emphasized. The following drawbacks of public management of public money can be seen in the analysis of functioning of information-analytical systems and modules on the use of public money such as “E-data”, “Prozorro” and others.

The concept and essential features of the public property legal regime in general and its constituent element such as public finances are described in detail. It is emphasized that the Operation of the joint forces in temporarily occupied territories in Donetsk and Luhansk regions leads to the formation of an additional set of peculiarities of the public property legal regime.

The author attracts attention to the fact that in resolving disputes during public money use as public property it is necessary to refer to three basic theories: the theory of public choice in a democratic environment; the theory of social welfare and the theory of fiscal exchange “taxes-good”.

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INTERNATIONAL LEGAL SOURCES AND MECHANISMS OF HUMAN RIGHTS PROTECTION AT TEMPORARILY OCCUPIED TERRITORIES

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INTRODUCTION

The effectiveness of human and civil rights protection at temporarily occupied territories in every specific case depends mostly on how any state in case of necessity can use positive international experience, relevant international legal mechanisms. It concerns Ukraine to the full extent too.

In this context, the primary task of Ukrainian state in the field of law-making is to form a holistic system of human rights and freedoms as an object of critical infrastructure, its details and effective provision of proper conditions of implementation. In other case, the creation of civil society and law-governed state are not possible, being essential for economy and industry, society functioning and people's safety, which can influence the national safety and defense of Ukraine, environment in a negative way, cause property damage and/or put a threat for life and health of people in case of disabling and violating of its functioning.

The constitutional human and civil rights belong to inalienable rights provided by the Constitution of Ukraine, which proves their special significance for the society and the state. However, unfortunately the Constitution refers to human rights in general, without specification regarding the occupied territories, since Ukraine encountered such problems only in 2014. Instead, international law gave a special attention to that issue long ago, confirming the awareness of importance of those problems by the world community. At present, "it is not easy to name another institution of modern international law, which would have such a number of treaties, covenants, agreements, conventions, etc. as an institution of human rights and freedoms. Dozens of international humanitarian treaties are a convincing indicator of normative provision in the human rights field. This also applies to the exercise mechanisms used in this area in comparison with other branches and institutions of

international law – they are more advanced and perfect. In addition, the human rights and freedoms as universal human value, irrespective of nations, ideologies, religions, etc., are to some extent an extra-national and extra-territorial object of international legal regulation"[1]. Therefore, respect for human rights, their protection is the duty of every state; and where they are violated, serious conflicts arise, as well as social and political tension, creating threats to peace and often requiring international intervention.

1. International Standards in the Field of Human Rights Protection

The world community, and first of all, developed democratic states, consider human rights and their protection as a universal ideal, a factor of stability, the basis for progressive development and well-being of mankind. Human rights are not prerogative of certain nations or classes, religions or ideologies. This is a universal historical and general cultural heritage, a moral foundation for all societies.

We agree with A. M. Kolodiy and A. Yu. Oliynyk, that a set of human and civil rights and freedoms, duties formed in Ukraine, in general, is in line with the principles of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Protocols № 2, 3, 8 and 11 thereto, ratified by our state[2]

As we can see at present, human rights are the subject of regulation not only of each individual state, but of the entire world community. Cooperation of states in the field of human rights is mainly taking place by developing universal international legal standards, their acceptance and recognition as fundamental human rights. The specified standards are enshrined in a number of international legal acts, which establish certain common standards, peculiar human rights standards, which states are obliged or encouraged to achieve.

The first among these documents is the Universal Declaration of Human Rights, adopted and proclaimed by the resolution of the United

[1] Погорілко В. Ф., Головченко В. В., Сірий М. І. Права та свободи людини і громадянина в Україні. К. :Ін Юре, 1997. 52 с.

[2] Колодій А. М., Олійник А. Ю. Права, свободи та обов'язки людини і громадянина в Україні : [підруч.]. К.: Правова єдність, 2008. 350 с.

Nations General Assembly on December 10, 1948. Since then, this date as the International Human Rights Day has been celebrated throughout the world. In the preamble – as the main source of the above standards – of this international legal act, it is noted that the adopted Declaration is "a model that all peoples and nations must strive to meet"[3].

Since the Universal Declaration of Human Rights was adopted in the form of a resolution, it is of a recommendatory nature, it is not legally binding. However, this does not mean that it should be considered as such a list of human rights and freedoms. The Declaration is a result of general agreement among all people of the world and is of great importance for the assertion of human rights throughout the planet. This document is still one of the main sources of law, a standard measuring of the "production" of many law-making subjects. Its provisions were reflected in constitutions and laws of most countries of the world, in particular, Western Europe and the states of the former Soviet republics.

Later on the fundamental principles of the Universal Declaration of Human Rights have been developed in many subsequent international and regional legal acts. First of all, in this sense, we should name the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the UN General Assembly resolution of December 1966. Along with the Universal Declaration of Human Rights, these international legal instruments received an unofficial name of the International Charter, or the Human Rights Bill[4].

Developing the provisions of the Declaration, the named pacts oblige states to ensure the provision of human rights in their constitutions and laws by all appropriate means, including legal ones. Thus, in accordance with the Covenant on Civil and Political Rights, the acceding states must respect and ensure for everyone, who is at its territory and under its jurisdiction, the rights provided in it regardless of race, color, national or social origin, level of welfare, political or other beliefs, gender, language, religion, etc. (clause 1, Article 2). In its turn, the Covenant on Economic,

[3] Погорілко В. Ф. Загальна декларація прав людини – одна з найважливіших загальнолюдських цінностей XX століття. Право України. 1999. № 4. С. 7–9.

[4] Конституційні права, свободи і обов'язки людини і громадянина в Україні : [монографія] / [Ю. С. Шемшученко, Н. І. Карпачова, Т. А. Костецька та ін.] ; за ред. акад. НАН України Ю. С. Шемшученка. К.: Юридична думка, 2008. 252 с.

Social and Cultural Rights obliges member states, on their own and within the framework of international assistance and cooperation, including in economic and technical fields, to take the most possible measures within the limits of their resources, in order to ensure the fullest possible, progressive implementation of rights recognized by this Covenant (Article 2) in life[5].

Among international legal acts on human rights of a regional nature, first of all, the European Convention on Human Rights, adopted on November 4, 1950 in Rome (the Rome Convention), with its twelve protocols, should be named. These documents describe the human rights and freedoms in detail that member states of the Council of Europe must ensure, as well as legal mechanisms for their protection. The latter include international organizations and institutions directly dealing with the issues related to violation of human rights and freedoms. For example, since the accession of Ukraine to the Council of Europe and ratification (1997) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Ukrainian citizens have been able (in case of exhaustion of existing national means) to protect their rights in the European Court of Human Rights.

Legal practitioners consider the development and recognition of international human rights standards as historical heritage of public development, the process of accumulation of experience in the field of human rights, which requires deep comprehension, study, all kinds of propaganda with the aim of the most comprehensive widespread practical application in law-making and law-enforcement activities. At the same time one of the main tasks is the formation of understanding of human rights in public consciousness as the highest social value. It is clear that all members of the world community have to deal with these problems.

At the same time, the wording of some provisions in international instruments on human rights contains some inconsistencies. For example, the International Covenant on Civil and Political Rights states: Each state "undertakes to respect and ensure" the rights specified in the Covenant. At the same time, the International Covenant on Economic, Social and Cultural Rights calls on states to "take measures within the resources available to ensure the progressive exercise" of rights specified therein in

[5] Мацькевич М. М. Конституційно-правові засади забезпечення культурних прав і свобод людини та громадянина в Україні : монографія. Івано-Франківськ : Місто НВ, 2012. 464 с.

full[6]. As we can see, the first document imposes on the state the obligation to ensure certain rights, and the second – prompts them for the relevant activity in the form of a recommendation, although in general its norms are binding. However, we must keep in mind that international legal acts on human rights are not a life-long dogma. They are created under the specific historical conditions and are changing, improving in the sense of content of human rights and freedoms, improving mechanisms and tools for their provision, taking into account changes taking place in the public life of the international community.

The fundamental principle of international legal acts on human rights is the UN Charter, adopted in 1945, which not only formulated the general, basic principles of the modern world law order, but also consolidated the fundamental ideas of respect for fundamental human rights and freedoms and embodied the consent of sovereign states to observe and cooperate in this area. In addition, it laid down the provisions on the universality of human rights clearly: the UN should promote "universal respect for and observance of human rights and fundamental freedoms for all, regardless of race, gender, language, and religion" (Article 55). The Charter also emphasizes that the protection of human rights is one of the urgent tasks of international community. So, it is no surprise that the UN and other international organizations, including regional state associations, have adopted more than fifty different world and regional international legal acts: conventions, declarations, covenants, charters, etc. with regard to human rights.

Among international legal acts provided by the world-wide international community, which formulated the most principal provisions regarding the human and civil rights and freedoms, in the context of our study, the following group should be separated: Universal Declaration of Human Rights (1948); The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights (1966); Convention against Discrimination in Education (1960); International Convention on the Elimination of All Forms of Racial Discrimination (1965); Convention on the Elimination of All Forms of Discrimination against Women (1979); Declaration of the Rights of the Child (1959); Convention on the Rights of the Child (1989).

[6] Мацькевич М. М. Конституційно-правові засади забезпечення культурних прав і свобод людини та громадянина в Україні : монографія. Івано-Франківськ : Місто НВ, 2012. 464 с.

There are also many international legal acts concerning the rights of certain categories of people, in particular the Declaration of the Rights of the Child (1959) and the Convention on the Rights of the Child (1989), which became the most complete normative acts, where the rights of the child acquired the international legal status. In addition, the initial idea of these documents is that the rights of the child require special protection and continuous improvement, and they also establish the norms forming favorable legal conditions for development. It is important that the Convention not only formulates the rights of the child, but also provides for the obligations assumed by the acceding states with regard to their provision.

It is interesting to note that the Declaration on the Rights of the Child proclaims such child's right as obtaining a free compulsory elementary education, which should contribute to development of a general culture, abilities and thinking of the child (Principle 8). The Convention on the Rights of the Child is based on principles of protection of these rights proclaimed in the Declaration. It is noteworthy that, along with economic and social rights of the child, the Convention also names cultural rights, obliging member states to take all appropriate legislative, administrative and other measures to maximize exercise of these rights, based on their available resources, and, if necessary, and in the framework of international cooperation (Article 4). Considerable attention in the Convention is given to such basic, complex subjective right of the child as the right to education. After all, without its unimpeded and proper implementation, the intellectual, cultural development of the child, as well as child's successful socialization (Articles 28, 29) is impossible.

Thus, international legal acts on human rights can be classified in terms of the following: 1) human rights in general – the Universal Declaration of Human Rights; 2) individual groups of human rights, such as the International Covenant on Economic, Social and Cultural Rights; 3) the rights of certain categories of people, such as the Declaration of the Rights of the Child, the Convention on the Rights of the Child, etc., 4) ensuring the conditions for the exercise of rights – the International Convention on the Elimination of All Forms of Racial Discrimination, etc.; 5) ensuring the conditions for implementation of certain groups of rights and freedoms, such as the Convention on the Elimination of Discrimination in Education, etc.

According to norm content of these acts, it is possible to distinguish groups of such provisions: 1) which contain a list and basic ideas of human rights and freedoms at the occupied territories; 2) where the main purpose of these subjective rights and freedoms is determined; 3) where a list of the main guarantees of certain rights and freedoms is given; 4) where the grounds and limits of possible restrictions of these subjective rights and freedoms are formulated.

The provisions, formulated in international legal acts, are usually not detailed, certain ideas, concepts, and principles are only fixed in a general form. It is determined by the nature of such documents, which, in fact, are intended to consolidate the basic, most general provisions and principles that must be specified in legislation and law practice of participating countries of the relevant international legal treaties, taking into account national specific culture, resource opportunities, etc. That is, universality of these documents, possibility of their application by the maximum number of subjects is provided in this way.

In relation to economically developed and democratic countries, the use of wording covering significant scopes of rights is inherent in their normative, first of all, constitutional regulation of human rights and freedoms. Therefore, there are all grounds to consider this approach as somewhat incorrect. Instead, in the process of development of material, cultural, and other levels of society, it enables expanding a set and scope of certain aspects, constituting the content of a certain right, without changing its name in legislation.

It is clear that the wordings of relevant norms of the current Constitution of Ukraine are consistent in general with the content of complex subjective rights and freedoms, and therefore the international legal standards regarding definition of the appropriate level of human capacity in various fields. At the same time, it is reasonable to supplement the Constitution of Ukraine with the wording of complex rights and freedoms at the temporarily occupied territories, stipulated in international legal documents.

The purpose of human rights, including at the occupied territories, is set out in the Universal Declaration of Human Rights for the first time, and subsequently, with some editorial changes, in the International Covenant on Economic, Social and Cultural Rights, the Convention on the

Elimination of Discrimination in Education and the Convention on the Rights of the Child.

The Convention on the Rights of the Child has its own specific nature in consolidation of human rights at the temporarily occupied territories. In particular, it provides for a very wide range of purpose of the right to education: from development of intellectual and physical abilities of the child to respect of the basic principles enshrined in the Charter of the United Nations and upbringing of a respectful attitude to the environment (Article 29). This specification is determined by specifics of the subject of the right to education – a child. In order to ensure child's proper socialization, it is necessary to inoculate a sufficiently large amount of knowledge, beliefs, patterns of behavior, communication, etc. in the child. The entire luggage is objectively needed for every person, regardless of race or nationality, political, religious, aesthetic or other preferences. And formation of the child's specified knowledge, skills and beliefs, proper education is possible at achieving the aim of education set forth in the Convention, and that is why it is so detailed. In addition, this emphasizes the social and personal value of the right to education, prompting the maximum number of states to accede to the Convention.

As it has been already noted, human constitutional rights and freedoms at the temporarily occupied territories are an integral part of the system of fundamental human and civil rights and freedoms in a modern democratic society. Therefore, their implementation must be guaranteed by a system of the same economic, political, ideological and legal factors in the same way as for other types of constitutional rights and freedoms. So, the guarantees provided by international instruments to ensure the system of democratic human rights and freedoms in general are also related to human rights at the temporarily occupied territories.

Such guarantees include, for example, the provision concerning possibility of a person to possess all the rights and freedoms provided regardless of race, color, nationality, social or material status, political, religious or other beliefs, gender, language, etc. It should also include the prohibition of a human rights distinction based on socio-economic, political or international status of the country or territory where a person lives, as well as the requirement to ensure adequate protection against any discrimination and effective renewal of lost or limited rights by a competent court etc.

The definition of person's legal status in international legal acts is based on the unity of rights and obligations of a person and the state. At the same time, the correlation of rights and obligations of the abovementioned subjects should ensure their equality as participants in certain public relations, and hence the mutual interest in exercise of mutual rights and obligations. Proceeding from necessity of ensuring the rights and legitimate interests of all subjects of public relations, the documents mentioned presume application of certain restrictions of rights and freedoms. Such provisions are contained in the Universal Declaration of Human Rights (Article 29), the International Covenant on Economic, Social and Cultural Rights (Article 4), the International Covenant on Civil and Political Rights (Part 1, Article 4), and other documents.

The existence of these provisions is determined, first of all, by necessity to legally consolidate the grounds and limits of the abovementioned restrictions for preventing the arbitrariness of state bodies and their officials with regard to human rights. In addition, the degree of such restrictions must be consistent with importance of circumstances under which they are implemented. Finally, in a democratic society, the restrictions should be used to ensure public order, welfare, the exercise of moral norms, etc.

The reasons for using human rights restrictions are described in the most detailed and specific way in relation to civil and political human rights. For example, in the relevant pact, they are extremely specific: a state of emergency in which the existence of nation is in danger, which should be officially declared[7].

The attention should be paid to the fact that the grounds for applying restrictions to these rights, formulated by the International Covenant on Economic, Social and Cultural Rights: the possibility of applying only such restrictions to these types of rights and freedoms that are compatible with their nature. We believe that in understanding and applying the above provision we should proceed from the fact that lawful and effective restriction of any rights can only be in case of its specificity and targeting. In other words, when it consists in complication or in full prohibition of use of only such social welfare at possession of which the exercise of a certain right can be aimed. Therefore, it is totally unacceptable, in

[7] Мацькевич М. М. Конституційно-правові засади забезпечення культурних прав і свобод людини та громадянина в Україні : монографія. Івано-Франківськ : Місто НВ, 2012. 464 с.

limiting, for example, cultural rights and freedoms, to narrow, directly or indirectly, the opportunities provided by other human rights and freedoms. The correct statement is opposite: it is unjust to limit the opportunities arising from the content of cultural rights and freedoms, if the restrictions must be, for example, to political or economic rights and freedoms of a person and a citizen.

It is reasonable to consider such important international legal acts as the Geneva Conventions on the Protection of Victims of War in more detail. These multilateral international treaties in the field of laws and customs of war, the purpose of which is legal protection of victims of armed conflicts, signed on August 12, 1949 (entered into force on October 21, 1950) at the United Nations Diplomatic Conference in Geneva (April 21-August 12, 1949). More than 190 states, an absolute majority of the countries around the world joined the Geneva Convention.

The Geneva Conventions have four universal international treaties, namely:

1. Convention on improvement of the fate of wounded and sick in regular armies, which obliges the participants to collect on the battlefield and provide assistance to the wounded and sick of the enemy. However, discrimination against the wounded or sick is prohibited for reasons of race, nationality, gender, political or religious beliefs. All wounded and sick, who were under the authority of the enemy, should be registered, and the data about them should be communicated to the state on the side of which they fought. Medical institutions, medical and sanitary staff, transport vehicles for the transportation of the wounded, sick, and sanitary property are protected, and the attack on them is prohibited.

2. Convention on improvement of the fate of the wounded, sick and shipwrecked persons from the armed forces at sea. The document formulates the rules for dealing with the sick and wounded during the Naval War.

3. The Convention on the treatment of prisoners of war, which establishes the rules to be observed in the treatment of conflict-affected prisoners of war by conflict parties.

4. The Convention for the protection of civilian persons in time of war, which provides for the humane treatment of the population at the occupied territory and protects their rights.

In addition to two Geneva Conventions in June 1977, under the aegis of the International Committee of the Red Cross, two Additional protocols were adopted: Protection of Victims of International Armed Conflict (Protocol I) and Protection of Victims of Armed Conflict of Non-International Nature (Protocol II). An Additional protocol III on the introduction of an additional distinctive emblem in the form of the Red Cross and Red Crescent has been added to the Geneva Convention since 2005.

The important international legal instrument – the Geneva Conventions became the development and improvement of relevant norms enshrined at that time in the Hague Conventions (1899, 1907) and the conventions signed in Geneva in 1864, 1906 and 1929. The Geneva Conventions adopted the basic principle of contemporary international law, consisting in the fact that wars are conducted against the enemy's armed forces, and military actions against the civilian population, the sick, the wounded, the prisoners of war and some other categories are prohibited.

The Geneva Conventions are applied in case of a declared war or any armed conflict, regardless of whether the existence of a state of war or occupation of the territory even in the absence of an armed resistance to this occupation is recognized by the parties.

States having acceded to the Geneva Conventions must comply with their provisions. In case the opposing party that does not participate in them is also obliged to adhere to them. Neutral countries also have the obligation to comply with the Geneva Conventions.

The provisions of the Geneva Conventions oblige participant states parties to seek and punish those who have committed or ordered to commit any human rights violations. The persons mentioned must be prosecuted by the state at which territory they committed the offenses or by the courts of any other participant state if they have evidence of their guilt.

The gross violations of the Geneva Conventions are intentional murder of the wounded, sick, prisoners of war and civilians, as well as torture and inhumane treatment, including biological experiments, harm to health, forcing prisoners to serve in the enemy's army, hostage-taking, serious destruction of property not caused military necessity, etc. Persons

guilty of such violations are considered to be war criminals and should be criminally liable.

The procedure for investigating applications for violations of conventions is also determined, and their members are obliged to pass laws that provide for adequate criminal punishment for the guilty. It is worth noting that the guidelines on humane treatment of the wounded during military actions are known from the 16th century. However, it is the First Geneva Convention (August 22, 1864) that is a specific signed document, recognized as a precedent by international military law. Henri Dunant, who during the Italian war witnessed the infernal suffering of the wounded and dying from wounds and diseases of French and Austrian soldiers after the Battle of Solferino in 1859, played an important role in the organization and signing of the convention.

H. Dunant initiated the development of rules for the countries participating in military conflicts dealing with the wounded and sick. So, in 1863 an international conference was held, in which, in particular, the principles of the Red Cross activities were laid. Later on, in August 1864, diplomats from European countries met with the aim of adopting a convention concerning "soldiers wounded in the war" upon the invitation of the Swiss government in Geneva. As a result, the first multilateral international treaty was signed, which defined the humanitarian rules of warfare formulated by the Red Cross. The fundamental provision of the Geneva Convention was based on the idea of helping and protecting every wounded person, regardless of the party for which he fought. The wounded, sick, persons in medical institutions, all the personnel of these institutions should have been considered neutral persons, regardless of the belligerent party that took possession of the area. That is, their can not be captured, and they are not considered captives. In addition to the wounded and staff, hospitals, their material base, locals, who help the wounded, were considered inviolable.

The so-called Geneva law (actually, humanitarian law) protects the interests of those military people who come out of action and civilians. In turn, the Hague Law ("law of war") is the rights and obligations of the opposing parties during hostilities.

In cases not covered by the Conventions, civilian population and combatants remain under the protection and validity of international legal principles derived from common customs, humanity and social

requirements. This provision, which was included in the text of the Hague Convention of 1907, was formulated by Friedrich von Martens.

2. Normative Consolidation of Law Principles in Armed Conflicts

The Convention proclaimed and consolidated the following principles of law of armed conflicts:

General principles:

1) humanity; 2) inviolability; 3) non-discrimination against war victims; 4) the international legal responsibility of states and criminal liability of natural persons for violation of the law of armed conflict.

Principles of using weapons and methods of armed struggle:

1) the restriction of conflicting parties regarding the choice of means of warfare; 2) distinction between civilian and military objects; protection of participants in armed confrontation and civilian population; 3) protection of the rights of combatants; 4) protection of civilians; 5) non-aggression concerning civilian population.

The application of humanitarian law does not affect the legal status of the parties to the conflict. This is the provision that concludes common to all four Geneva Conventions of 1949 Article 3, is important in the sense of removing political contradictions. Humanitarian law has its basic principles on which everything is being built. The principle of humanity should be formulated as follows: military necessity and maintenance of public order should always be combined with respect to a person. From such principle, the principle of humanitarian law, or the law of war arose: the parties which are at war should not inflict harm to the enemy, incompatible to the purpose of war – destruction of the enemy or weakening of its military power.

From the latter follows the following principle of Geneva law: disabled persons, as well as those who are not involved in direct military operations, have the right to respect, protection, and humane treatment. The basis for the Hague law or the law of war was the 11th principle of humanitarian law: the right of parties to choose the methods and means of conducting hostilities is not unlimited. Similarly, the Hague Regulation of 1907 stipulates: “The right of opposing parties to use means of causing harm to the enemy is not unlimited” (Article 22). The latter provision is fully confirmed by the Additional protocol I of 1977. The general principles are the basis for other principles, primarily common to Geneva

law and human rights. First of all, it is the principle of inviolability; everyone has the right to respect for life, physical and mental inviolability, and respect for everything that constitutes an integral part of his/her personality.

This postulate can be better explained by the principles of its application.

1) The dead on the battlefield is inviolable; the enemy surrendered in captivity has the right to saving life. This is the basis of the Geneva Conventions – Only a soldier who is ready to kill himself can be killed;

2) Torture, humiliating or inhuman punishment is prohibited. Today, torture is already banned by the laws of many countries, international law, especially by the Geneva Conventions and human rights law;

3) Everyone has the right to recognize his/her human rights before the law. Thus, in the Geneva Conventions there is one warning that, in captivity, civil rights may be limited to the required level;

4) Everyone has the right to respect for his/her honor, family rights, beliefs and customs;

5) Everyone who suffers should be provided with the required assistance in his/her state. The stated obligation, stipulated by the Geneva Convention of 1864, has not lost its relevance up to now;

6) Everyone has the right to communicate with his/her family and to receive assistance. Protocol I provides for "the right of families to know about the fate of their relatives" and specific measures for the search for dead and disappeared people (Articles 32-34);

7) No one can be illegally deprived of his/her property. In addition to the principle of inviolability, there is a principle of non-discrimination, which provides that the treatment of all people should not depend on race, nationality, social origin, property status, gender, language, political, philosophical or religious beliefs, or any other similar grounds.

8) One more principle – safety: everyone has the right to personal safety. This principle is determined by the following principles of application: no one can be recognized liable for actions that he/she did not commit; reprisals, collective punishment, and hostage taking, deportation is prohibited; everyone has the right to generally accepted legal guarantees; no one can repudiate the rights given by the humanitarian conventions.

The following group includes the principles of victims of conflicts (under Geneva law). First of all, this is the principle of neutrality: humanitarian aid is never considered as interference in the conflict. This principle, which is very important in the activities of the Red Cross, is embodied in the provisions that put the medical staff over the conflict. Its application principles:

– Having guaranteed inviolability, medical personnel should refrain from any hostile action. In 1907, civilian medical personnel was guaranteed similar protection and under the same conditions as the military one;

– The medical staff is under protection;

– No person performing medical functions can be forced to provide anyone with any information regarding the sick or wounded who was or is under his/her care if this information, in his/her opinion, would be detrimental to patients or their families;

– No one should be persecuted or be convicted for taking care of a wounded or sick person. Under the First Geneva Convention of 1949, this applies to those who cared for the wounded partisans or cooperated with the medical institutions of the occupation authorities.

The next principle is “normality”: persons who are under protection should have the opportunity to lead the most normal life. This idea has arisen from the need for a compromise between humanitarian demands and the conditions of war. From it follows the principle of application: taking in capture – no punishment, but only a means to deprive the enemy of the possibility to cause harm. Everything else that is beyond this purpose is disapproved. One more principle – “protection”: the state must provide protection of those who is under its authority, both at the national and international level. The principles of applying this provision are as follows:

– The captive is not under the authority of the troop that captured him, but under the authority of the state, which these troops serve;

– The state is responsible for persons captured, as well as at the occupied territory, for the maintenance of public order and public services;

– Victims of conflicts should be provided with international protection, as they are deprived of the natural protection of their own state.

Among the principles relating to the law of war, the first general principle is the restriction of persons. The civilian population and certain persons must have a common defense against the dangers that arise from military operations. Several principles of application arise from here:

– The parties to the conflict must distinguish between the civilian population and the combatants in order to spare the civilian population and objects;

– The civilian population in general and individual civilians should not be subject to attack, even in reprisals;

– The acts of violence or threats of violence, which have the main purpose of terror against the civilian population, are prohibited;

– The parties to the conflict take all appropriate preventive measures to spare the civilian population, or, as far as possible, to avoid accidental loss and accidental damage to them;

– Only persons belonging to the armed forces, have the right to attack the enemy and resist to him. Noncombatants have mercy because they are not involved in the conflict. When the civilian population opposes the enemy, it must openly carry weapons and observe the laws and customs of the war.

The second general principle is a restriction in relation to objects: attacks should be strictly limited to military objects. Principles of application:

– It is forbidden to attack on areas that are not defended;

– It is prohibited to engage in any hostile actions against buildings where scientific research is conducted, charitable institutions, historical monuments are located, where there are works of art or places of worship that make up the cultural or spiritual heritage of people. The protection of military and civilian hospitals is the subject of special provisions of the First and Fourth Geneva Conventions of 1949;

– It is prohibited to attack equipment and facilities if this could endanger the civilian population (this primarily applies to dams, dike and nuclear power plants);

– Civilian objects should not be the object of attack or reprisal (it is forbidden to destroy or export the objects necessary for the survival of civilian population);

– Prohibition of robberies.

The following principle is a restriction on means and methods of warfare: it is prohibited to use against anyone (including combatants), weapons or methods of warfare that may cause unnecessary harm or suffering. The sense is in disapproval of weapons and methods that cause excessive suffering. Principles of its application:

– Attacks of non-selective nature are prohibited. The purpose of the principle is to exclude those methods and types of weapons that do not have the proper precision to distinguish between military and civilian objects and the population;

– Such attacks are prohibited that according to predictions may cause losses among civilian population or damage to civilian objects that are excessive in relation to that specific and direct predicted military superiority. This applies primarily to land mines installed outside the area of hostilities;

– In the course of hostilities, environmental protection must be taken into consideration. The Protocol contains a modern wording: during hostilities, care is taken to protect natural environment from large, long-term and severe losses. The protection is in the prohibition of use of methods or means of warfare intended to cause or are likely to cause harm to the natural environment (destruction of forests, other green spaces, etc.), which will harm the population or their survival;

– It is prohibited to use famine as a method of warfare among the civilian population;

– Article 54 § 1 provides for the protection of agricultural areas;

– Military actions based on treachery are prohibited (for example, masked mini-traps under the usual objects).

Further restrictions on violence in Europe and in the world, the next steps were aimed, in particular the signing of important new international treaties. Among these international acts concerning the laws and customs of war, the following acts remain its significance: the Declaration of the Maritime War (Paris, 1856); Declaration on the prohibition of use of explosive and inflammatory bullets (St. Petersburg, 1868); a number of conventions, as well as the Declaration on the prohibition of use of bullets that unfold or flatten in the human body (The Hague, 1899); Convention on the release of hospital ships from port and other charges during wartime (The Hague, 1904); The Hague Conventions of 1907; Declaration on the Law of the Marine War (London, 1909); Geneva Protocol on the Prohibition of Use of Chemical, Poisonous and

Bacteriological Means of Warfare (1925); Submarine Rules for Commercial Vessels in Wartime (London, 1936); Geneva Conventions on the Protection of Victims of the War (1949): On the improvement of fate of the wounded and sick in the operating armies (predecessors – Geneva Conventions 1864 and 1929), On the improvement of fate of the wounded, sick and shipwrecked members of the armed forces at sea (replacing the Hague Convention of 1907), On the treatment of prisoners of war (replacing the convention of 1929), On the protection of civilians during the war; The Hague Convention for the Protection of Cultural Values in the Event of Armed Conflict of 1954. These documents are based on the principle of war humanization which is still in force under the modern conditions.

The principle of non-use of mass destruction weapons is in the basis of Declaration on the Prohibition of Use of Nuclear Weapons of 1961, the Convention on the Prohibition of the Development, Production and Accumulation of Bacteriological and Toxic Weapons and on their Destruction (1972), UN General Assembly Resolutions 2441 (1968), according to which the Diplomatic Conference (Geneva, 1977) adopted two Additional protocols for the development of the Geneva Conventions of 1949. The first protocol is on protection in the period of international armed conflicts, and the second one is on the situation of non-international armed conflicts. It is also worth noting the following important international instruments: the Convention on the Prohibition of Use of Military or Other Hostile Use of Environmental Impact Measures (1977), the Convention on the Prohibition or Restriction of Use of Certain Conventional Weapons and its Additional protocols (1980). In general, these normative legal acts are the codification of the rules of warfare.

The Cold War termination, the creation of more favorable opportunities for the functioning of a peace-keeping mechanism provided by the UN Charter, could not stop the spread of armed conflicts. Most of them are internal in nature, and mostly civilians are victims. Although the principles and grounds of international humanitarian law recognized by the international community remain unchanged, the subjects who are obliged to apply these norms have still not enough knowledge about it. Today, the efforts of legal practitioners are aimed at correcting this situation. In particular, there is a need to clarify the relations between the tasks of maintaining peace and providing protection and assistance to victims of armed conflicts[8].

[8] Рудюк С. П. Міжнародне гуманітарне право. Конспект лекцій. К.: МО України, 2004. 201 с.

CONCLUSIONS

In a view of the above mentioned we should note that international cooperation of states in the field of human rights protection at the temporarily occupied territories is revealed, in particular, in developing and adopting certain standards in relation to the legal status of a person. Recognizing the general standards of human rights, the states are obliged to observe them in their law-making and law-enforcing activity. Observance of undertaken obligations is one of the necessary conditions of the world recognition of any state.

Ukraine as many other countries must not adopt the laws revoking or diminishing the human rights and freedoms. At the same time, international law and legal practice of democratic states allow certain restrictions of rights and freedoms to some extent as it is necessary for protection of constitutional order, rights and legitimate interests of citizens, provision of defensive capacity and safety of the state, moral and physical health of the society[9].

Certainly, the human rights and freedoms at the temporarily occupied territories can be restricted. For that reason, their protection is one of the priorities of Ukrainian state; its activity should completely meet the international standards.

Summarizing the abovementioned, we distinguish the following groups of international legal acts. According to the purpose, a set of international legal acts in relation to human rights can be divided into such acts which concern:

1) Human rights in general – the Universal Declaration of Human Rights; 2) individual groups of human rights, such as the International Covenant on Economic, Social and Cultural Rights; 3) the rights of certain categories of people, such as the Declaration of the Rights of the Child, the Convention on the Rights of the Child, etc., 4) ensuring the conditions for the exercise of rights – the International Convention on the Elimination of All Forms of Racial Discrimination, etc.; 5) ensuring the conditions for implementation of certain groups of rights and freedoms, such as the Convention on the Elimination of Discrimination in Education, etc.

[9] Мацькевич М. М. Конституційно-правові засади забезпечення культурних прав і свобод людини та громадянина в Україні : монографія. Івано-Франківськ: Місто НВ, 2012. 464 с.

According to norm content of these acts, it is possible to distinguish groups of such provisions: 1) which contain a list and basic ideas of human rights and freedoms at the occupied territories; 2) where the main purpose of these subjective rights and freedoms is determined; 3) where a list of the main guarantees of certain rights and freedoms is given; 4) where the grounds and limits of possible restrictions of these subjective rights and freedoms are formulated.

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COMPARATIVE LEGAL ANALYSIS OF CRIMES AGAINST PERSON'S HEALTH OF CERTAIN COUNTRIES OF ROMANO-GERMANIC LEGAL FAMILY

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INTRODUCTION

Health protection is an object of critical infrastructure, one of the state functions in Ukraine as well as in any other state. In Ukraine a holistic organizational-legal system is approved and is functioning at the state level. The basis of state policy in the field of health protection is formed by the Verkhovna Rada of Ukraine consolidating relevant provisions in law. The Criminal Code of Ukraine (hereinafter – the CC) is not an exception.

Each country has the legislation on criminal liability – it is a law containing the norms of criminal-legal nature. The Criminal Codes of all post-Soviet states was built in such a way. There are also states, such as Germany and France, which have a law on criminal liability and other laws regulating criminal-legal issues. Comparison of the Criminal Codes of other states, namely, the main compositions of crimes against person's health, will allow distinguishing certain features, differences between norms and may be of practical interest to the national lawmaker in order to improve it. For this reason there is a need to study the peculiarities of criminal responsibility for crimes against person's health according to the criminal law of countries with the world legal systems of different types (families), and especially the Romano-Germanic type.

Studying the law on criminal liability for infringement on person's health in Romano-Germanic law system, it is worth paying attention to the Criminal Codes of Post-Soviet countries (The Republic of Belarus (hereinafter referred to as Belarus)[1], the Republic of Moldova

[1] Criminal Code of the Republic of Belarus. №. 275-Z of 9 July, 1999 (as amended up to July 12, 2013). URL: http://cis-legislation.com/document.fwx?rgn=1977. (дата звернення: 20.04.2019 р.)

(hereinafter – Moldova)[2], the Russian Federation (hereinafter – Russia)[3], the Kyrgyz Republic (hereinafter – Kirghizia)[4], the Republic of Latvia (hereinafter– Latvia)[5], the Republic of Lithuania (hereinafter –Lithuania)[6], the Republic of Armenia (hereinafter – Armenia)[7], the Rupublic of Kazakhstan (hereinafter – Kazakhstan)[8], the Republic of Tajikistan (hereinafter – Tajikistan)[9], the Republic of Estonia (hereinafter – Estonia)[10], the Republic of Uzbekistan (hereinafter – Uzbekistan)[11], Ukraine[12]) and Germany, France, Spain, Austria and Bulgaria.

1. Comparative Analysis of Criminal-Legal Protection of Person's Health in the Post-Soviet States

In general, the legislation on criminal liability was influenced by the fact that the above States were a part of a single state for over 70 years. This fact determined the direction of criminal legislation development and, with the proclamation of Ukrainian independence it determined the necessity for its improvement. In studying of the above-mentioned Criminal Codes, the norms of the Special Part, which stipulate criminal liability for crimes against person's health, are researched. In the national

[2] Criminal Code of the Republic of Moldova. № 985 of April 18, 2002. (as amended up to November 11, 2016). (MD138). URL: https://sherloc.unodc.org/res/cld/document/criminal-code-of-the-republic-of-moldova_html/Republic_of_Moldova_Criminal_Code.pdf. (дата звернення: 20.04.2019 р.)

[3] The Criminal Code Of The Russian Federation No. 63-Fz Of June 13, 1996. URL: https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf (дата звернення: 20.04.2019 р.)

[4] Criminal Code of the Kyrgyz Republic No. 68 of October 1, 1997. (as amended up to Law No. 62 of April 21, 2014). URL: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/705a3f3b34f0090ec12577440047742c/$FILE/Criminal%20Code_en.pdf. (дата звернення: 20.04.2019 р.)

[5] Criminal Code of Latvia, of March 14, 2002, Law No. IX-785 (Last amended on December 23, 2010, by Law No XI-1264). URL: https://likumi.lv/ta/en/id/88966-the-criminal-law. (дата звернення: 20.04.2019 р.)

[6] Lithuanian Criminal Code, of March 14, 2002, Law No. IX-785 (Last amended on December 23, 2010, by Law No XI-1264). URL: https://wipolex.wipo.int/en/text/202109. (дата звернення: 20.04.2019 р.)

[7] CRIMINAL CODE OF THE REPUBLIC OF ARMENIA OF APRIL 18, 2003. URL: HTTP://WWW.PREVENTGENOCIDE.ORG/AM/CRIMINALCODE.HTM. (ДАТА ЗВЕРНЕННЯ: 20.04.2019 Р.)

[8] The Code of the Republic of Kazakhstan dated 3 July 2014. № 226-V of the Law of the Republic of Kazakhstan. URL: https://wipolex.wipo.int/en/text/407059. (дата звернення: 20.04.2019 р.)

[9] Criminal Code of the Republic of Tajikistan. URL: http://cis-legislation.com/document.fwx?rgn=2324. (дата звернення: 20.04.2019 р.)

[10] Penal Code of the Republic of Estonia (consolidated text of January 1, 2012). URL: https://wipolex.wipo.int/en/text/432563. (дата звернення: 20.04.2019 р.)

[11] Criminal Code of the Republic of Uzbekistan 1994 (as amended up to Law of the Republic of Uzbekistan No. 93 of April 25, 2007). URL: https://sherloc.unodc.org/res/cld/document/criminal-code-of-the-republic-of-uzbekistan_html/Uzbekistan_Criminal_Code_1994.pdf. (дата звернення: 20.04.2019 р.)

[12] Кримінальний кодекс України від 5 квіт. 2001 № 2341-III // Відомості Верховної Ради України. 2001. № 25-26. Ст. 131 (редакція від 26.02.2019 р.). URL: http://zakon3.rada.gov.ua/laws/show/2341-14.

criminal law, they are united in section II "Crimes against person's life and health".

Intentional grave physical injury has certain differences in comparable Criminal Codes. Thus, according to the Criminal Code of Russia (Article 111), Armenia (Article 112), Tajikistan (Article 110), in contrast to the Criminal Code of Ukraine (Article 121), a list of features of intentional grave physical injury includes a mental disorder (this feature is present solely in the CC of Russia), drug addiction or substance abuse as well; consciously full loss of professional working capacity for a guilty person. The CC of Lithuania, defining features of physical injuries in Articles 135, 138, 139, establishes their "specific" features – this is the loss of most of professional or general working capacity by a person. Such features, in our opinion, are unacceptable, since, firstly, it is not determined which part of loss of working capacity exactly, so, it is not defined as a percentage (33%), as in the Criminal Code of Uzbekistan (Article 104) or in a partial (1/3) meaning; and secondly, the "stability" of such working capacity loss is not defined. The next discussion point of Article 135 of the Criminal Code of Lithuania is a serious or lasting disease, which is a real threat to life. This feature, in our opinion, includes HIV/AIDS, other incurable infectious diseases and sexually transmitted diseases, as there are no articles in the Criminal Code of Lithuania providing criminal liability for such deeds.

The Criminal Code of Estonia (Article 107) determines mental illness as one of the features. The current Criminal Code of Ukraine no longer uses this terminology, but the Rules of forensic definition of the degree of physical injury gravity contain this term.

The Criminal Code of Moldova (Article 151) distinguishes and specifies the consequences – irrecoverable mutilation of face and (or) adjacent areas (zones). The same situation is in the Criminal Code of Belarus (Article 147) with the only difference: a health disorder, associated with trauma of the spine bones for a period of more than four months, or that was manifested in irrecoverable mutilation of face or neck. So, the structural differences between comparable articles are that some of them include consequences that are "positive" in our opinion and have to be implemented in the Criminal Code of Ukraine. We should pay attention to one of consequences placed in the Criminal Code of Moldova, Belarus which is "irrecoverable mutilation of face and (or) adjacent

areas". In comparison with the article of the Criminal Code of Belarus, which specifies only the neck, we believe that such specification is inappropriate, because not only the parts/areas (in addition to face and neck), such as the face and neck, can suffer as a result of the criminal deeds, but also, the ears, hair covering of the head, which in the future may affect not only the physiological, but also on the mental state of a person, especially in the case of females. Criminal Code of Uzbekistan in Article 104 defines this feature as irrecoverable mutilation of the body.

The lawmaker in the Criminal Code of Russia also distinguishes drug addiction or substance abuse as one of the crime consequences. In addition, the same norm of the Criminal Code of Russia provides a complete loss of professional working capacity. The previous CC of Kazakhstan (Article 103) also identified one of the features of grave physical injury as a complete loss of professional working capacity, but this "goes beyond the scope of forensic examination and for its establishment it is necessary to involve the commission of experts according to the victim's profession"[13]. The Criminal Code of Belarus distinguishes the intentional deprivation of professional working capacity in a separate article (Article 148). The articles of the Criminal Code of Ukraine do not have such feature, but the amount of lasting loss of working capacity is determined taking into account the regulatory criteria defined by the Ministry of Health for establishing the degree of lasting loss of professional working capacity in percentage and does not belong to the duties of forensic medical experts.

Regarding the *intentional physical injury of middle gravity*, we should note that the features of these articles are that the Criminal Code of Belarus (Article 149) specifies a prolonged health disorder for up to four months, as opposed to other comparable CCs. Commented Criminal Code of Belarus in Article 149 sets the time for damage to the spine bones as 122 days. Such position is provided in clause 15 of the Rules of forensic examination of the nature and gravity of physical injuries in the Republic of Belarus[14]. Instruction on the procedure for conducting forensic examinations concerning the determination of gravity of physical injuries

[13] Абдрашит А. А. Уголовная ответственность за умышленное причинение тяжкого вреда здоровью по законодательству Республики Казахстан: автореф. дис. … канд. юрид. наук: спец. 12.00.08 «Уголовное право и криминология; уголовно-исполнительное право». Саратов: Акад. МВД Республики Казахстан. 2004. 24 с.

[14] Кухарьков Ю. В., Самойлович М. В. Судебно-медицинская експертиза характера и степени тяжести телесных повреждений: учебно-метод. пособие. Минск, 2003. С. 13.

in the Republic of Belarus in clause 24.10 states that, with the longer course of trauma of skeleton bones the physical injury should be assessed as grave[15]. The Criminal Code of Moldova (Article 152) and Lithuania (Article 139) contain an intentional physical injury of middle gravity or middle gravity of health damage. "The provisions of this article are not clear enough, since their simultaneous application violates the requirements for the law conciseness and is unnecessary, because the second one covers the first"[16].

Criminal Code of the abovementioned countries in the list of articles of crimes against person's health contain an article establishing criminal liability for intentional grave physical injury caused in a state of intense emotional distress. In the Criminal Code of Ukraine this is Article 123. Comparing the codes, these articles have some discrepancies. The Criminal Code of Russia (Article 113), Belarus (Article 150), Kirgizia (Article 106), Armenia (Article 114), Kazakhstan (Article 111), Tajikistan (Article 113) and Moldova (Article 156), the dispositions other than those which suddenly arose as a result of unlawful violence or severe abuse on the part of the victim, indicate also the infliction of other illegal or immoral actions of the victim. In addition, the codes of Armenia, Kazakhstan, Russia and Belarus indicate that such behavior of the victim (mentioned above) arose as a result of a long traumatic situation. In the Criminal Code of Latvia (Article 127) it is legally determined that a state of intense emotional distress may arise as a result of "violence or a serious abuse of honor from the victim's side". The CC of Lithuania (Article 136) defines the condition of a intense emotional distress as "an unlawful deed on the part of the victim or a particularly strong abuse against them or their close person", and the CC of Armenia – which arose as a result of outrages.

Features of some articles of the Criminal Code and in the consequent consequences set forth in either one part of the article, or in different parts:

The Criminal Code of Lithuania – disfigurement or grave harm;

[15] Инструкция о порядке проведения судебно-медицинской экспертизы по определению степени тяжести телесных повреждений от 24 мая 2016 г. № 16. URL: http://www.pravo.by/upload/docs/op/T21603582_1475096400.pdf.

[16] Хавронюк М. І. Кримінальне законодавство України та інших держав континентальної Європи: порівняльний аналіз, проблеми гармонізації. Київ: Юрисконсульт, 2006. С. 664.

The Criminal Code of Armenia, Tajikistan – part 1 – harm of middle gravity, and in part 2 – grave harm to health;

The Criminal Code of Kyrgyzstan (Article 106) and Latvia (Article 127), Uzbekistan (Article 106) – grave or less grave harm to person's health or grave or physical injury of middle gravity. The same situation is with regard to the consequences in the Criminal Code of Kyrgyzstan (Article 107) and Latvia (Articles 128, 129) in case of exceeding the limits of necessary defense or in case of exceeding the measures necessary for the detention of a criminal, in contrast to the Criminal Code of Ukraine (Article 124 "Intentional grave physical injury in excess of the limits of necessary defense or in case of exceeding the measures necessary for detention of a criminal"). Analyzing the articles, we divided them into groups: depending on the consequences caused; circumstances that exclude the criminality of the deed, and their structural placement in the articles of the Criminal Code.

1. In some countries, a lawmaker distinguishes different circumstances that exclude the criminality of a deed in some articles with the establishment of the same consequences (grave or physical injuries of middle gravity), examples of which are articles of the Criminal Code of Latvia (Articles 128, 129), Kazakhstan (Articles 112, 113), Armenia (Articles 115, 116), Uzbekistan (Articles 107, 108), Kirghizia (Articles 107, 108), the Criminal Code of Estonia (Articles 110, 111).

2. In some countries, a lawmaker distinguishes these circumstances in various articles of the Code with the establishment of various consequences – the Criminal Code of Belarus (Articles 151, 152) and the Criminal Code of Tajikistan, for example, in Article 114 – this is an intentional causing of grave harm to health, committed in excess of the limits of the necessary defense, and in Article 115 for intentional harm of middle gravity (part 1) or grave (part 2) harm to the health of the person who committed a crime in case of exceeding the measures necessary for the detention of a criminal.

3. Different parts of the article determine different circumstances and set different consequences, for example, in the Criminal Code of Russia (Article 114), part 1 – grave harm to health in case of exceeding the limits of necessary defense, part 2 – grave or harm of middle gravity to person's health in case of exceeding the measures necessary for the detention of a criminal.

4. Circumstances that exclude the criminality of a deed are indicated in different parts of a single article with the same consequences, for example, Article 124 of the Criminal Code of Ukraine.

5. Some Criminal Codes do not define a criminal punitive deed in case of exceeding the necessary defense or in case of exceeding the measures necessary for the detention of a criminal – the Criminal Code of Moldova and Lithuania.

Part 1 of Article 125 "Intentional trivial physical injury" of the Criminal Code of Ukraine, Part 1 of Article 112 "Intentional causing of trivial harm to health" of the Criminal Code of Tajikistan, the Criminal Code of Kirghizia (Article 117) establishes criminal liability for causing a short-term health disorder or a minor loss of working capacity. Differences between the Criminal Code of Ukraine are in the fact that in the Criminal Code of Kirghizia, Tajikistan it is about the loss of "minor persistent" working capacity, and the Criminal Code of Russia (Part 1 of Article 155) and Belarus (Article 153), Armenia (Article 117) specifies, namely: minor persistent working capacity should be general, and not any other.

The peculiarity of the Criminal Code of Latvia in Part 1 of Article 130 and the Criminal Code of Estonia in Article 113, in addition to the features of trivial physical injury, the law also recognizes deeds that do not result in these consequences. Such "addition" includes the features that in the Criminal Code of Ukraine are included in the composition of the crime of "blows" stipulated in Part 1 of Article 126. Part 3 of Article 130 of the Criminal Code of Latvia provides for criminal liability for "systematic blows having the nature of torment or other torment, which did not lead to grave physical injury or physical injury of middle gravity". Thus, the Criminal Code of Latvia (Article 130 "Trivial physical injury"), Lithuania (Article 140 "Causing pain or trivial physical injury"), Estonia (Article 113 "Violent actions against a person") provides for liability for the specified consequences and deeds, which can cause pain to the person, such as blows and torment.

In some post-Soviet codes, such as the Criminal Code of Tajikistan, Estonia, this article does not provide qualifying features, as in the Ukrainian Criminal Code.

Part 2 of Article 155 of the Criminal Code of Russia contains qualifying features of intentional trivial physical injury, namely: a) from

hooligan motives; b) for motives of political, ideological, racial, national or religious hatred or hostility or from the motives of hatred or hostility in relation to any social group. The Criminal Code of Kazakhstan decriminalized deeds providing criminal liability for the trivial harm to person's health (Article 108) and blows (Article 109)[17].

Blows and torment. Article 126 of the Criminal Code of Ukraine provides for criminal liability for blows and torment. Part 1 has identified blows as intentional hits, blows or other violent acts that caused physical pain and did not cause physical injury. In the Criminal Code of Russia (Article 116), Kirghizia (Article 100), Tajikistan (Article 116), the article "Blows" refers to blows or committing other violent acts that caused physical pain but did not cause any consequences – trivial harm to the health. The Criminal Code of Armenia (Article 118) does not define the consequences in the article – pain or physical pain, in contrast to the above-mentioned codes.

In the Criminal Code of Belarus in Article 154 "Torment" provides for responsibility for "intentional causing of prolonged pain or torment in ways that cause particular physical and mental suffering of a victim, or systematic blows that have not caused grave and less grave physical injury". The Criminal Code of Ukraine also provides for criminal liability for torment in Part 2 of Article 126 "The same acts that have the nature of a torment committed by a group of persons, or in order to intimidate the victim or their relatives or on grounds of racial, national or religious intolerance". And the Criminal Code of Russia (Article 117), Tajikistan (Article 117) "Causing physical or mental suffering through systematic blows or other violent actions, if it did not cause grave or harm of middle gravity to health". So, here in case of causing trivial physical injuries (trivial harm to health), the actions of a guilty person are covered by this article.

The criminal Code of Moldova does not provide for criminal liability for blows and (or) torment.

Analysis of the articles of the Criminal Code of Ukraine and the post-Soviet states, which provide for criminal liability for blows, shows their certain distinctive features. Only the Criminal Code of Ukraine in the disposition of Article 126 contains one of the methods of blows – a hit.

[17] О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам совершенствования правоохранительной системы // Закон Республики Казахстан от 3 июля 2017 г. URL: № 84-VI. https://zakon.uchet.kz/rus/docs/Z1700000084#202.

At the same time, the Criminal Code of Russia, Kirghizia, Tajikistan does not have such a concretization. Moreover, the Russian lawmaker in determining the consequences (physical pain) notes the mandatory absence of trivial harm to health, Ukrainian legislature – physical injuries (any of them). Qualifying features of Article 116 (Part 2) of the Criminal Code of Russia provides for a deed committed: a) on hooligan motives; b) on motives of political, ideological, racial, national or religious hatred or hostility or on motives of hatred or hostility to any social group. The Criminal Code of Ukraine in Part 2 of Article 126 provides for liability for the same deeds that have the nature of torment committed by a group of persons, or in order to intimidate the victim or their relatives or on motives of racial, national or religious intolerance. The Criminal Code of Russia establishes grounds with a certain distinction, namely: political, ideological, racial, national or religious hatred or hostility, or on motives of hatred or hostility to any social group.

As for the differences between the articles providing for criminal liability for torment, the Criminal Code of Ukraine (Part 2, Article 126), Russia (Part 1, Article 117) and Belarus (Part 1, Article 154) have certain peculiarities, namely: 1) according to the Criminal Code of Ukraine, this crime is considered to be terminated from the moment of the consequences onset – physical pain; according to the Criminal Code of Kazakhstan (Article 110) – causing physical or mental suffering and trivial physical injury; the Criminal Code of Russia (Article 117), Tajikistan (Article 117), Kirghizia (Article 111) – causing physical or mental suffering and trivial physical injuries; Belarus (Article 154) – the onset of prolonged pain or suffering, caused by methods that cause particular physical and mental suffering, trivial physical injury; Uzbekistan (Article 110) – causing trivial physical injuries.

The commentary to the Criminal Code of the Republic of Belarus states that systematic to cause the liability for torment (Article 154) it is necessary to cause blows systematically. The systematic nature means that a person committed more than two identical or homogeneous offenses. So, in this case, the crime is terminated from the moment when blows take place for the third time[18]. The following are the actions associated with multiple or prolonged pain belonging to torment: pinching, flogging,

[18] Комментарий к Уголовному кодексу Республики Беларусь / Н. Ф. Ахраменко, Н. А. Бабий, А. В. Барков и др.; под общ. ред. А. В. Баркова. Минск: Тесей, 2003. С. 30.

causing multiple but minor injuries with blunt or sharp objects, the effects of thermal factors, and other similar actions (clause 23)[19]. Torment will take place in case when they are repeatedly executed for the purpose of causing particularly painful feelings, physical or mental suffering to the victim, they have nature of torture [20].

Torture As a result of a comparative analysis of the post-Soviet Criminal Code articles, we came to the conclusion that torture as an independent article is provided in the Criminal Code of Ukraine (Article 127 "Torture"), Armenia (Article 119 "Torture"), Moldova (Part 3 of Art. 166^1 "Torture, inhuman treatment or such treatment humiliating dignity"), Belarus (Article 128 "Crimes against the safety of mankind")[21]. Their main features are distinguished. Lawmakers of Moldova, Belarus, Armenia, and Ukraine point the features of torture are pain and suffering. The Criminal Codes of the Russian Federation (note to Article 117), Kazakhstan (Article 146), and Tajikistan (Article 143^1) indicate the definition of torture and establish only one feature – suffering (physical and psychological). Thus, the lawmaker does not call pain as a feature of torture that in our opinion, greatly narrows this concept. Therefore, in case of implementation of such deeds that cause pain, the qualification of deeds under this article is excluded, because the scientists refer the concept of "pain" and "suffering" to the different categories.

In addition, the Criminal Codes of Ukraine, Moldova, in contrast to other mentioned codes, "strengthen" some features of torture, namely, "causing severe pain and suffering", although it does not affect qualification. The Criminal Code also specifies a special purpose. In the Criminal Code of Ukraine – compelling the victim or another person to take actions that contradict their will, including obtaining from them or another person information or recognition, or in order to punish them or another person for acts committed by them or another person or in the commission of which they or another person are suspected, as well as in order to intimidate or discriminate against them or other persons; the

[19] Правила судебно-медицинской экспертизы характера и тяжести телесных повреждений в Республике Беларусь от 14 нояб. 1991 г. № 200. URL: http://pravoby.info/docum09/part36/akt36157.htm

[20] Комментарий к Уголовному кодексу Республики Беларусь / Н. Ф. Ахраменка, Н. А. Бабий, А. В. Барков и др.; под общ. ред. А. В. Баркова. Минск: Тесей, 2003. С. 294.

[21] Катеринчук Е. В. Проблемы соответствия уголовного законодательства в сфере запрета пыток международным стандартам // Идеал свободной человеческой личности: от международних пактов о правах человека к современной Конституции: материалы Междунар. науч.-практ. конф. (м. Минск, 16 дек. 2016 г.). Акад МВД Республики Беларусь. 2016. С. 76–78.

Criminal Code of Russia – an inducement to witness or other actions that contradict the will of a person, as well as for the purpose of punishment or for other purposes. Analyzing this provision, it remains unclear why the lawmaker of Russia tries to establish the purpose of torture, and then abstracts it with the terms "other actions" and "other goals"; the Criminal Code of Belarus – the receipt of information or recognition from them or from a third person, the punishment of them for the action which they committed or the third person or for which they are suspected, as well as intimidation or coercion of them or a third person or for any other reason using discrimination of any nature; the Criminal Code of Moldova means receiving from them or from a third person information or confession, punishment of them for their action, committed by them or a third person or in the execution of which they are suspected, intimidation or coercion of them or a third person or for any other reason based on discrimination of any kind, if such pain or suffering is caused by an official or other person acting in an official capacity or from incitement, or with their knowledge or tacit consent, with the exception of pain or suffering arising exclusively from the law sanctions, inseparable from these sanctions or caused by them by chance. The article of the Criminal Code of Armenia does not define the goal of this crime.

The Criminal Code of Ukraine indicates blows, torment or other violent actions as the ways of torture; Armenia – blows or other violent actions. There are no ways mentioned in the Criminal Code of Russia, Belarus, Kazakhstan, Tajikistan and Moldova.

The subjective features are different too, namely, the subject of crime of "torture". In the Criminal Code of Kazakhstan (Article 146), Tajikistan (1431), unlike other provisions of the Criminal Codes, there is an investigator or another official, a person who conducts an investigation. Such feature shows that the given codes, in contrast to the Ukrainian and other codes are close to the provisions of international normative legal acts ratified by Ukraine.

So, torture as an independent crime composition is foreseen only in some of the Criminal Codes analyzed by us. In articles where the features of torture were identified, we found the following differences: an alternative goal or its absence, ways of committing torture or their absence, "specific" qualifying features.

Careless grave or physical injury of middle gravity (Article 128 of the Criminal Code of Ukraine). When comparing the disposition of the articles, it was found that the Criminal Code of Belarus (Article 155), Moldova (Article 157), and Ukraine do not have any particular differences. The Criminal Code of Russia (Article 118) provides for liability only for causing grave physical injury by negligence, also this article has Part 2, which establishes liability for the same deed committed as a result of improper performance of professional duties by a person.

The distinctive features in this aspect are the provisions of the Criminal Code of Lithuania (Articles 137, 138), Tajikistan (Articles 118, 119) and Armenia (Articles 120, 121) providing for criminal liability for grave and minor gravity harm to person's health in different articles. The Criminal Code of Kazakhstan in four parts determines as criminal punishable deeds the following: causing middle gravity harm to health by negligence (Part 1, Article 114); causing middle gravity harm to health by negligence to two or more persons (Part 2 of Article 114); causing grave harm to health by negligence (Part 3 of Article 114); causing grave harm to health by negligence for two or more persons (Part 4 of Article 114).

Contamination with human immunodeficiency virus or other incurable infectious disease. The distinctions in the Criminal Code of Russia (Article 122), Moldova (Article 212), Estonia (Article 1192), Belarus (Article 157), Armenia (Article 123) and Ukraine (art. 130) are as follows: firstly, in the fact that the Criminal Code of Moldova and Estonia use the term AIDS, as opposed to the other Criminal Codes; secondly, the Criminal Code of Ukraine establishes liability not only for the contamination with a human immunodeficiency virus, but also for the person's contamination with another incurable infectious disease, which is dangerous for human life; thirdly, the Criminal Code of Russia (Part 3 of Article 122), Kirghizia (Part 4 of Article 117) and Moldova (Part 4 of Article 212) establish a special subject of a crime – a medical employee, due to non-performance or improper performance of their professional duties; fourthly, in the Criminal Code of Armenia, the qualifying feature of this article is the contamination of a pregnant woman intentionally.

The legislation of some countries, the Criminal Code of Russia (Article 122), the Criminal Code of Moldova (Article 212), the Criminal Code Kazakhstan (Article 118. Note) provides for the possibility of exemption from criminal liability in connection with the consent of the

victim to put them in danger of contamination or HIV contamination by a person who has known about a virus. In the Criminal Code of Latvia (Article 133) there are no defined incentive or qualifying norms and especially qualifying features, there is no reference to "other incurable infectious diseases". Criminal liability arises only in the case of "intentional contamination of a person with a human immunodeficiency virus (HIV)". In the Criminal Code of Estonia in Article 119[1], it is indicated that a person who avoids the treatment of a sexually transmitted disease can be brought to liability. At the same time, the Criminal Code of Ukraine does not recognize such deeds as criminal, but Article 45 "Avoidance of the examination and preventive treatment of people with sexually transmitted disease" of the Code of Ukraine on Administrative Offences[22] defines it as a law offence.

Criminal Law of Uzbekistan in Article 113 determines such deed as criminal which causes the spread of a sexually transmitted disease or AIDS. Firstly, one article contains two norms, and secondly, AIDS is the final stage of human immunodeficiency virus disease. In addition, deeds leading to "another incurable infectious disease" are not determined as criminal ones.

Criminal liability also arises for *contamination with sexually transmitted disease*. The differences in the articles of comparable codes are that the Criminal Code of Belarus (Article 158) and Estonia (Article 119) establish liability for intentional placing another person in danger of contaminating with a sexually transmitted disease by a person who has known about this disease, noting about the way of committing a crime – through sexual intercourse or other actions. In the Criminal Code of Armenia, in addition to contamination with a sexually transmitted disease, "other sexually transmitted infections" are foreseen.

2. Criminal-Legal Protection of Person's Health in Other Countries of Romano-Germanic Legal Family

Another representative of the Romano-Germanic type is the Criminal Code of *Germany*[23], in section 17 "Criminal deeds against physical inviolability" the following types of physical injury are distinguished:

[22] Кодекс України про адміністративні правопорушення (редакція від 26 жовт. 2017 р.) // Відомості Верховної Ради Української РСР. 1984, додаток до № 51. Ст. 1122.

[23] Criminal Code of Germany (2013). URL: https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p0012 . (дата звернення: 30.09.2017 р.)

physical injury, dangerous and grave physical injury. The peculiarity of these articles is that § 223 “Physical injury” provides for liability for causing physical injury to another person or harm to their health. The second type in § 224 “Dangerous physical injury” is distinguished from the previous article by the following means: by use of poison or other substances harmful to health; by use of weapons or other dangerous gear; with a treacherous attack; together with another person; through life-threatening treatment. In § 226, “Grave physical injury”, the features of this injury are indicated: loss of vision on one or both eyes, hearing, speech or ability to childbirth; the loss of an important organ of the body or a long period of inability to use it or to remain largely distorted or become a chronically sick person, paralyzed, or mentally ill or have any physical or mental deviations. Therefore, comparing the provisions of the Criminal Code of Ukraine and Germany, certain features can be distinguished; firstly, the Criminal Code of Germany distinguishes such feature as the loss of childbirth ability by the victim. It is also noted that as a result of a physical injury, the victim is to a large extent and for a long time remains distorted or becomes chronic, paralyzed, or has a mental illness or any physical or mental deviations. In the case of a physical injury caused the death of a victim, criminal liability arises under § 227 “Physical injury that caused death”. The lawmaker in § 228 provides for liability for physical injury, with the consent of a victim, with the mandatory condition that the person acts illegally only if the deed, despite the consent of a victim, violates generally accepted moral practices. Apart from guilt in the form of intent, the CC of Germany also foresees crimes committed by negligence. One of the examples is § 229 “Physical injury caused through neglect”. In some cases, the articles of the German Criminal Code cover procedural issues. For example, intentional infliction of physical injuries or through neglect are prosecuted only by claim, except in those cases where the prosecution authorities find it necessary that intervention was received from the relevant authority because of a particular public interest (§ 230 “Victim’s claim”). The issues of such nature are mentioned in the Criminal Procedural Code of Ukraine in Chapter 36, “Criminal proceedings in the form of a private prosecution”. In § 225, “Abuse of persons under wardship” of the Criminal Code of Germany, a lawmaker specifies a special victim (a person who has not reached the age of eighteen, or a person who is

defenseless as a result of illness or physical disability, who: 1) is under their care or under their protection; 2) belongs to their family; 3) is provided at their disposal by a person obliged to provide material assistance to them; 4) was subordinate to them in the framework of official and working relations. This clause also provides for punishment for torment or torture, intentional neglect of personal duties to take care of a persons causing harm to their health. Qualifying features are death, grave harm to health, causing significant harm to physical or spiritual development. Participation in a fight or an attack committed by several persons is punishable only for the participation provided for in § 231. So, German criminal law does not provide for other types of physical injury, blows and torment, as well as special types of physical injury.

The Criminal Code of *France*[24], chapter II, "On infringement on physical or mental inviolability of a person", section 1, "On intentional infringement of inviolability of a person", provides for liability for torture or acts of cruelty (Article 222-1). If these actions were taken in relation to a minor who has not reached the age of fifteen (clause 1, Article 222-3); to a person whose special vulnerability due to the age, illness, injury, physical or mental defects or in the state of pregnancy is obvious or known to the executor (clause 2, Article 222-3); in relation to a relative on the ascending line or adoptive parent or mother (clause 3 of Article 222-3). The qualifying features mentioned are the most grave as for gravity degree compared with others that provide for a special victim (magistrate, juror, lawyer, public servant, representative of the law, commissioner of justice, gendarmerie officer, national police officer, customs officer, penitentiary administration, any other person who has been given public authority or a person entrusted with the duty of public service in the performance of or in connection with the performance of these functions or duties, if such status of a victim is apparent or known to the executor (clause 4 Article 222-3); witness, victim, civil plaintiff (clause 5, Article 222 -3). The same article also provides for a special subject of a crime – a spouse or a person who lives with a victim in a civil marriage (clause 6, Article 222-3), a person possessing public authority or a person who performs duties in the civil service (clause 7 Article 222-3). Separate clause 8 of this article provides for punishment for the implementation of the above actions in

[24] Criminal Code of the French Republic (as of 2016). URL: https://eige.europa.eu/gender-based-violence/resources/france/french-penal-code-general-criminal-law-articles-221-2-222-3-222-5-222-10. (дата звернення: 20.04.2019 р.)

complicity, with the intention (clause 9, Article 222-2) and with the use or threat of use of weapons (clause 10, Article 222-2). Article 222-4 specifies the victim and the way of committing a crime provided in Article 222-1 – systematically in relation to a minor who has not reached the age of fifteen, or a person whose vulnerable position is obvious or known to the executor according to age, illness, injury, physical or mental defects or in the state of pregnancy. Using torture or acts of cruelty with consequences in the form of injuries or chronic diseases, liability arises according to Article 222-5 of the Criminal Code of France, and in case of consequences in the form of death by negligence – according to Article 222-6.

In § 2 "On violent actions" the Criminal Code of France points to violent actions caused death (Article 222-7); violent actions caused injury or chronic disease (Article 222-9); violent actions caused total loss of working capacity (Article 222-11); violent actions resulted in loss of working capacity for a period less or equal to eight days (Article 222-13); systematic violent actions (Articles 222-14). In case of the prescription of harmful substances as medicines that caused harm to the physical or mental inviolability of another person, the liability arises according to Article 222-15. So, in criminal law of France, a lawmaker does not distinguish the types of physical injury in the article, as it is made in the Criminal Codes of the post-Soviet countries.

In addition, the Criminal Code of France contains articles providing for liability for threatening a person to commit any actions or actions mentioned above (Articles 222-17) in any way (Article 222-18). Moreover, the Code of France determines qualifying features in certain articles or clauses that are repeated in the articles described above. Thus, the provisions of Article 222-3 are reflected in Articles 222-8, 222-10, 222-12 and 222-13 with certain peculiarities, first of all, they are used in articles that refer to physical injuries, and secondly, only Articles 222-12, 222-13 have identical clause 11, which indicates the place where the crime was committed, namely: educational and fostering institution, and Article 222-14 mentions the way – systematic violent actions.

"Deeds determined as criminal infringements on mental inviolability are not only threats, but also sound aggressions, for example, committed repeatedly in order to disturb the rest of a person, "unfriendly" phone calls (Article 222-16). As for the threat, then, the threat to commit the

following is punishable: a) any crime or misconduct against a person whose attempt is punishable if committed repeatedly or in material form (Article 222-17); or b) any crime or misconduct against a person accompanied by an order to fulfill the condition, regardless of the way[25]. "Unintentional infringement on person's inviolability" is placed in section II. The features of these crimes are that a lawmaker of France also distinguishes physical injury through negligence: 1) full loss of working capacity (Article 222-19); 2) full loss of working capacity of another person for a period of less than or equal to three months (Article 222-20). In Article 222-21 a special subject is determined – a legal entity, for actions specified in Article 222-19 and 222-20.

The Criminal Code of *Spain*[26] in section III "Physical injuries" in part 1 of Article 147 defines and provides punishment for injuries violating physical inviolability, physical or mental health. In case of less grave harm, criminal liability is stipulated in Part 2 of Article 147 of the Criminal Code of Spain. The features of grave physical injury: loss or injury of a significantly important organ or limb or organ of sense, impotence, infertility, grave disfigurement, mental or physical illness are provided by Article 148 of the Criminal Code of Spain. Other features, such as loss or injury of a less important organ or limb or deformity are stated in Article 150 of the Criminal Code of Spain. Analysis of the provisions of these articles leads to the conclusion that Article 148 of the Criminal Code of Spain refers to grave physical injury, and Article 150 of the Criminal Code of Spain determine the features of physical injury of middle gravity. However, in our opinion, there can be no organs in the human body that have certain criteria of "importance" or "no importance". Each organ performs certain functions in the human body and its loss or organ inability to perform certain functions leads to negative changes throughout the whole body. In addition, in comparison with some provisions of the Criminal Code of Ukraine, there are no other fundamentally essential features of grave physical injury. Article 152 of the Criminal Code of Spain determines physical injuries caused by negligence.

[25] Хавронюк М. І. Кримінальне законодавство України та інших держав континентальної Європи: порівняльний аналіз, проблеми гармонізації. Київ: Юрисконсульт, 2006. С. 669.

[26] Penal Code of Spain (Organic Law No. 10/1995 of November 23, 1995, as amended up to Law No. 4/2015 of April 27, 2015). URL: https://wipolex.wipo.int/en/text/507602. (дата звернення: 20.04.2019 р.)

Unlike national criminal law, the Criminal Code of Spain provides for liability in case of physical injury with the lawful voluntary consent of the victim (Article 155 of the Criminal Code of Spain). The Criminal Code of Ukraine does not contain such provisions, except for Article 409 "Avoidance of military service by self– disfigurement".

Article 630 of the Criminal Code of Spain does not define the name or stage of diseases, at the same time, it is stated that someone who leaves syringes or other dangerous instruments in a way or in such circumstances that they can harm people or contaminate with diseases or in places that are often visited by minors is subject to criminal liability.

In Spain, in the middle of 70s, the process of democratic transformation was embodied in one of the most important legal documents of contemporary European history – the Constitution of 1978[27], having become the basis for the reforms in all domains of life: economic, social, political and legal. Along with the proclamation of human fundamental rights and freedoms, this Constitution contains a number of provisions that directly regulate the issue of criminal liability. Article 15 of the Constitution of Spain defines an absolute ban as "no one can ever be subjected to torture, cruel or inhuman or humiliating punishment". Therefore, section VII, "Torture and other crimes against mental inviolability" contains a whole number of articles (Article 173-177 of the Criminal Code of Spain) against the use of torture not only by a general subject, but also a special one. The next peculiarity of this section is that a lawmaker has determined that in case of causing physical injuries or harm to the life, physical inviolability, health, sexual freedom or property of the victim or a third person, such action is punished separately (Article 177 of the Criminal Code of Spain). This way, it simplified the qualifications and made competition of norms impossible.

The Criminal Code of Austriai[28] in par. 1 § 83 provides for criminal liability for physical injury or harm to health with intent. In par. 2 § 83 a list of features of physical injury is provided. The norm contains

[27] Spanish Constitution of 1978 «Constitution passed by the Cortes Generales in plenary meetings of the Congress of Deputies and the Senate held on October 31, 1978. Ratified by referendum of the Spanish People on December 7, 1978. Sanctioned by his majesty the King before the Cortes Generales on December 27, 1978».URL:http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf (дата звернення: 20.04.2019 р.)

[28] Criminal Code of Austria 1975 (as last amended by Federal Law Gazette (BGBl) I № 33/2011). URL: https://www.legislationline.org/documents/section/criminal-codes/country/44/Austria/show. (дата звернення: 20.04.2019 р.)

contradictory terminology, “physical inviolability”, “physical injury” and “harm to health”, raising a number of questions. Firstly, “physical injury” is any injury caused damage to the physical inviolability of the human body (even a prick with a needle causes damage); and secondly, the term “harm to health” is wider than the term “physical injury”.

In this case, one article may have different consequences and different forms of guilt according to gravity degree. In addition, the Criminal Code of Austria established other features of physical injury as well. For example, grave physical injury (§ 84 of the Criminal Code of Austria) is an act caused health harm that lasts more than twenty-four days, or loss of professional working capacity or physical injury or harm to health, which is grave itself. This article is significantly different from the provisions of Article 121 of the Criminal Code of Ukraine and has a lot of evaluative categories, which, in our opinion, make understanding of features of such injury difficult. Other features of grave physical injury are defined by Austrian lawmaker in § 85 “Physical injury causing long-lasting grave consequences”, namely:

1) Loss of speech, vision, hearing or ability to childbirth or severe violations of these functions of the body;

2) Significant disfigurement that is visible, mutilation;

3) Severe suffering, chronic illness or loss of professional working capacity, forever or for a long time.

So, according to the name of the article, it is any physical injury, regardless of gravity degree, having the above features. The situation is the same in case of the victim’s death (§ 86 of the Criminal Code of Austria).

In case of injured person’s consent to infliction of physical injury, criminal liability is excluded if this does not contradict to generally accepted norms (§ 90 of the Criminal Code of Austria).

Criminal punishable is also the following:

1) Participation in a fight (Paragraph 1 § 91 of the Criminal Code of Austria), or if, as a result of the fight, a grave physical injury was committed (§ 84, paragraph 1 of the Criminal Code of Austria) or death to another person (paragraph 1 § 91 of the Criminal Code of Austria);

2) Causing physical or mental suffering to another person who has not reached the age of eighteen years or is defenseless as a result of their helplessness, illness or dementia and who is supported and in care of the

person who commits the crime (Paragraph 1 of § 92 of the Criminal Code of Austria).

So, a lawmaker of Austria identified a special victim, criminal liability is excluded in case of causing suffering to the "general" victim. In addition, as a special legal category in Austria criminal law, the term "with particular cruelty" is distinguished. Section 35 of the Criminal Code of Austria lists such crimes as "causing grave physical injuries with particular cruelty". It is these norms that are a certain novelty, since by 2007 these cases were considered separately and determined as component features of the objective side[29].

The Criminal Code of the Republic of Bulgaria (hereinafter – Bulgaria)[30] [28] in section II "Physical injury" in Articles 128-135 defines features and types of physical injuries.

The features of grave physical injury (Article 128 of the Criminal Code of Bulgaria) have certain differences from the features contained in Article 121 of the Criminal Code of Ukraine. Firstly, in Article 128 of the Criminal Code of Bulgaria a prolonged mental disorder is mentioned, the theory of criminal law stipulates about a mental illness that does not depend on its duration and degree of curability; and secondly, in the Criminal Code of Bulgaria, features of loss of pairs of organs are defined, but their list is incomplete, testicles, ovaries, organs of hearing, eyes are not determined. In addition, in case of loss of certain organ functions, qualification, in our opinion, will be carried out by the feature of a permanent general health disorder; thirdly, the mutilation that caused a permanent disorder of speech or the proper functioning of any organ of senses. This feature of grave physical injury is controversial. The organs of senses carry out the following types of sensitivity – touch, smell, taste, hearing, balance, and sight. In this case, the mutilation of senses as one of the features is duplicated by others – permanent blindness to one or both eyes, loss or maiming of a leg or an arm, loss of speech. In addition, the article does not refer to face mutilation, although most organs of the human senses are focused on the face (nose, eyes, and ears) and oral cavity (tongue).

[29] Assault, wounding and related offences. URL: https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/assault_wounding_offences.html) (дата звернення: 30.09.2017).

[30] Criminal Code of Bulgaria Publication State Gazette № 26 / 02.04.1968, in force as of 01.05.1968, Last amendment SG № 32/27.04.2010, in force as of 28.05.2010. URL: https://www.legislationline.org/documents/section/criminal-codes/country/39/Bulgaria/show. (дата звернення: 20.04.2019 р.)

In case of physical injury of middle gravity, features of physical injury of middle gravity according to the Criminal Code of Bulgaria (Article 129 of the Criminal Code of Bulgaria) are sometimes similar to the features of grave physical injury defined in the Criminal Code of Ukraine, for example, a wound, penetrating into the skull, chest or abdominal cavity. According to the Criminal Code of Bulgaria, some features of grave physical injury duplicate the features of physical injury of middle gravity – maiming legs or arms (Article 128 of Bulgaria) and facial or other body mutilation (Article 129 of Bulgaria). The question about temporarily life-threatening health disorder arises.

Trivial physical injuries (paragraph 1, Article 130) are all other injuries that do not fall under the features defined in Article 128 and 129 of the Criminal Code of Bulgaria. In case of causing pain or suffering without a health disorder, criminal liability arises according to par. 2 Article 130 of the Criminal Code of Bulgaria. In Article 131 qualifying features for physical injuries of any degree of gravity are provided separately.

In case of causing any physical injury in excess of the limits of necessary defense and in a state of intense emotional distress caused by violence, severe abuse, slander or other illegal action on the part of the victim, which resulted in or could be resulted in severe consequences for the guilty person or their relatives, criminal liability is provided in one article (Article 132) of the Criminal Code of Bulgaria. Careless infliction of grave physical injury or physical injury of middle gravity is defined in Article 133 of the Criminal Code of Bulgaria.

After comparing the articles (Article 133 of the Criminal Code of Ukraine and 135 of the Criminal Code of Bulgaria) providing for criminal liability for contamination of sexually transmitted diseases, the results show that their difference is that in Bulgaria a lawmaker determines the way of putting into danger of contamination – by sexual intercourse or in other way. This feature, in our opinion, can not affect the qualification formula, therefore it is not appropriate.

CONCLUSIONS

Therefore, according to the Criminal Code analysis results it can be stated that legal acts on criminal liability of certain foreign countries protect person’s health to a different extent. It is determined by the fact

that not all Criminal Codes contain norms providing criminal liability for “blows and torment”, “torture”, “contamination with sexually transmitted diseases” etc. In the articles of the Criminal Codes examined, the limits of physical injuries are “washed out” or their features are sometimes duplicated because they stipulate criminal actions (violent actions, attacks) without further concretization of criminal consequences in the article.

At the same time, it should be mentioned that the best Codes, containing the largest amount of norms designed to protect health, are the Criminal Code of France because it reveals their features in a clearest way, the Criminal Code of Bulgaria and some Criminal Code of the post-Soviet countries. In general, some provisions of the foreign Criminal Codes are the example for its succession in the national criminal law.

SUMMARY

The fact that Ukraine was a part of the former Soviet Union for some decades influenced the legislation on criminal liability. It determined the direction of criminal law development, and after Ukrainian independence acquiring, defined the necessity for its changes and essential improvement. So, carrying out comparative legal analysis of crimes against health in some countries of Romano-Germanic legal family, we would like to mention, that certain provisions of foreign criminal legislation is an example for their succession in national criminal legislation.

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MUTUAL INSURANCE COMPANIES AS PARTICIPANTS OF CONTRACTUAL INSURANCE RELATIONS

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Insurance contractual relations as well as any civil legal relations are revealed through a set of their elements, namely, subjects, objects and content. One of the most essential issues is the determination of peculiarities of subject composition of the relations mentioned. Thus, in Chapter 67 of the Civil Code of Ukraine (hereinafter – the CC of Ukraine), dedicated to insurance contracts, as well as in other chapters related to contracts, the main content of articles is reduced to determination of someone who concludes and how someone concludes the contract, what rights and obligations of the parties are, which legal consequences will arise due to violation of contract terms and conditions. Therefore, the most norms in the field of contractual relations are dedicated to the parties of legal relations such as counterparties to the contract.

Legislative approaches to determination of the circle of possible participants in legal relations and determination of their legal status are reduced today to the method of self-regulation of contractual civil relations by their participants directly[1]. Thus, the legal conditions of the parties to the contract are determined by legal relations participants themselves taking into account basic provision in civil law acts.

As it follows from Articles 979, 984 of the Civil Code of Ukraine and provisions of Article 16 of the Law of Ukraine "On Insurance"[2], the parties to the insurance contract are the insurer and the insured. The insurer and the insured are the main participants of insurance relations since they take part in their emergence, change and termination directly. The participation of all other participants depends on the will of the insured party and\or the insurer exactly, as well as it is resulted from Ukrainian current legislation provisions.

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The Civil Code of Ukraine defines the insurer as a legal entity specially created for carrying out insurance activity and has received a license for the insurance activity under the established procedure (Part 1, Article 984). At the same time, as it follows from Article 979 of the Civil Code, the insurer is a party to an insurance contract, undertaking an obligation to make an insurance payment upon the occurrence of an insured event.

Based on requirements of the Law of Ukraine "On Financial Services and State Regulation of Markets of Financial Services"[3], as well as the Law of Ukraine "On Insurance", financial services in general and insurance services in particular should be provided directly by the person to whom such right is provided not by a contract, but by law, taking into account its requirements. In this regard insurance can be carried out exclusively by financial institutions, stipulated by Article 2 of the Law of Ukraine "On Insurance", which have received a license for the right to carry out insurance activities. Thus, according to Article 2 of the Law of Ukraine "On Insurance", financial institutions are recognized as insurers created in the form of joint-stock companies, full, limited partnerships or companies with additional liability and carry out insurance activities based on relevant license. Enterprises, institutions and organizations can not become insurers by amending the statutory documents, provided that they were previously engaged in another type of activity.

In addition to commercial insurance organizations, 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 subjects of entrepreneurial activity. This is the main difference between a mutual insurance company and a commercial insurance organization, for which the provision of insurance protection is a means of obtaining profit[4]. As scientific literature notes, mutual insurance as a separate type of insurance, other than direct insurance, co-insurance and reinsurance, is a non-commercial form of insurance

[3] *Закон України «Про фінансові послуги та державне регулювання ринків фінансових послуг» від 12 липня 2001 р. //* Відомості Верховної Ради України. 2002. № 1. Ст. 1.

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protection based on a group agreement on reimbursement in certain amounts of damages to each other in case of occurrence of insured events[5]. The main goal of mutual insurance consists in redistribution of risks, providing its participants with the most qualitative, diverse insurance services at a reasonable price. According to experts' evaluations, mutual insurance companies play an important role at the insurance markets of most developed countries[6]. Six out of ten biggest insurance companies in the world are mutual insurance companies[7].

The legal principles of a mutual insurance company activity in Ukraine are currently limited to Article 14 of the Law of Ukraine "On Insurance", Part 3 of Article 352 of the Commercial Code of Ukraine and the Provisional Regulations on the Mutual Insurance Company, approved by the Resolution of the Cabinet of Ministers of Ukraine on February 1, 1997[8]. Thus, Article 14 of the Law of Ukraine "On Insurance" and Part 3 of Article 352 of the Commercial Code of Ukraine only declare the possibility of establishing mutual insurance companies and include a reference to another legal act, namely, the Provisional Regulations, where at the same time it is not defined the following: the concept of mutual insurance, objects of mutual insurance, the grounds for becoming a member of a mutual insurance company, the procedure for withdrawal and the procedure for the exclusion of members from a mutual insurance company, the grounds for obtaining a license by a mutual insurance company, etc.[9]

Thus, the legal framework, which has to regulate the activities of mutual insurance companies in Ukraine, is now almost absent leading to the winding up of previously established companies. So, in Ukraine today, not any mutual insurance company, which carries out non-profit

[5] Економічний зміст і принципи організації взаємного страхування. URL: http://uig.com.ua/index.php?option=com_content&task (дата звернення: 26.12.2018); Абрамов В. Ю. Общества взаимного страхования. Особенности правового положения // Страховое право. 2005. № 2. С. 4–7; Гришин Г. В. Общества взаимного страхования // Страховое право. 2000. № 4. С. 47–51; Логвинова И. Л. Взаимное страхование как метод создания страховых продуктов. М.: Анкил, 2010. С. 66.

[6] Адамов А. С. Історичні аспекти взаємного страхування // Актуальні проблеми держави і права. 2009. Вип. 51. С. 254.

[7] Економічний зміст і принципи організації взаємного страхування. URL: http://uig.com.ua/index.php?option= com_ content&task (дата звернення: 26.12.2018)

[8] Тимчасове положення про товариство взаємного страхування, затверджене постановою Кабінету Міністрів України від 1 лютого 1997 р. URL: http://zakon2.rada.gov.ua/laws/show/132-97-%D0%BF (дата звернення: 27.12.2018).

[9] Мачуський В. В. Взаємне страхування: організаційно-правові аспекти // Право України. 2008. № 4. С. 64.

insurance, is registered. And this negatively affects the realization of the insurance institution potential and points to the structural imbalance of the national insurance market[10]. Attempts for their creation were made during 1995-1998, when the following mutual insurance companies were officially registered: “Nasha Sprava” and «Ukrmistsevprom», organized by enterprises of local industry; “Kyiv Regional Fund for Mutual Insurance “Promyslova Ukraina”[11]. The termination of the legal framework further development for the functioning of mutual insurance companies led to uncertainty in their legal status that forced the above-mentioned mutual insurance companies to terminate their activities.

At the same time, there is no comprehensive research in the field of mutual insurance in scientific literature. Some aspects of the issue mentioned are reflected in the works of P. A. Strelbitsky[12], A. A. Panteleymonenko[13], S. A. Navrotsky[14]. The historical-legal aspect of mutual insurance organizations was considered by A. S. Adamov[15], V. V. Machusky[16], and K. M. Tverdomed[17]. However, the area of mutual insurance is the subject of research mainly by economists-scientists, whose works in the context of the very legal regulation of mutual insurance are of a general review nature.

In general, a mutual insurance company is a legal entity, an insurer created to insure the risks of its members, whose rights and obligations are determined by the fact that each participant is both an insurer and the insured at the same time. In foreign publications, the mutual insurance company (in German – Gesellschaft zur gegenseitigen Versicherung) is regarded as non-commercial insurance organization which has no aim to

[10] Віленчук О. М. Еволюція становлення та розвитку некомерційного страхування в аграрній сфері // Вісник ЖНАЕУ. 2012. № 1(2). С. 98.

[11] Манжура О. В. Кооперативи у страховому секторі: історичний досвід і перспективи для України // Вісник аграрної науки Причорномор’я. 2015. Вип. 1. С. 79.

[12] Стрельбіцький П. А. Товариства взаємного страхування: зародження, розвиток, становлення // Вісник Хмельницького інституту регіонального управління та права. 2003. № 2 (6). С. 264–271.

[13] Пантелеймоненко А. О. Західноєвропейські товариства взаємного страхування та страхові кооперативи: сутність організації, зміст діяльності і значення. URL: http://www.ukrcoop-journal.com.ua/num/ pantelejmonenko1.htm (дата звернення: 27.12.2018).

[14] Навроцький С. А. Розвиток товариств взаємного страхування в АПК // Вісник Тернопільської академії народного господарства. 2001. Вип. 15. С. 63–65.

[15] Адамов А. С. Історичні аспекти взаємного страхування // Актуальні проблеми держави і права. 2009. Вип. 51.

[16] Мачуський В. В. Правове регулювання страхової діяльності в Україні (господарсько-правові аспекти): автореф. дис. на здобуття наук. ступеня канд. юрид. наук: спец. 12.00.04. К., 2013. 15 с.

[17] Твердомед К. Кооперативне страхування в Україні в період непу (1921–1929) // Право України. 2003. № 2. С. 135–139.

obtain profit and is designed to provide insurance services at the lowest possible cost in favor of its members[18].

The decision on the amount and terms of insurance contribution payment of each individual member of the company is determined in accordance with the procedure established by the supervising body of the mutual insurance company depending on financial conditions of each company's member in accordance with the conditions specified in the contract concluded between the members and the mutual insurance company. Each member of the company, in case of fulfillment of all their obligations to the mutual insurance company, regardless of the amount of insurance contribution, has the right to receive necessary insurance indemnity in full in case of an insured event occurrence (Clause 5 of the Provisional Regulations).

Insurance relations between the above company and its members are based on the concluded insurance contract in which the subject of insurance, insurance amounts, the procedure for their payment and the procedure for making insurance payments are determined taking into account the peculiarities of each company's member[19]. Moreover, the responsibilities of one company's member may be assigned to another one, that is, the insurance contract may provide payments of one or more members of the company for other members in full or in part. In case of one insurer's withdrawal from the company or its winding up, the contract between its other members remains in force. Company's members receive a certificate confirming their accession to the insurance contract, the procedure for issuing of which is established by the National Commission for the Regulation of Markets of Financial Services (Clause 6 of the Provisional Regulations).

As a rule, mutual insurance companies do not use the services of insurance intermediaries and all operations are carried out at the expense of the company's insurance funds; and in case of shortage of funds, its members make additional contributions according to the decision of the general meeting.

[18] Definition of «Mutual Company». URL: http://www.investopedia.com/ terms/m/mutualcompany.asp (Last accessed: 27.12.2018).

[19] Страховое право: учебник / Под. ред. В. В. Шахова, В. Н. Григорьева, А. П. Архипова. М.: ЮНИТИ–ДАНА: Закон и право, 2008. С. 179.

Under the conditions of 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 insurance companies, in particular, if their activities are of local nature and the annual amount of insurance premiums collected does not exceed 5 million Euro[20]. 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" only legal entities in any organizational-legal form that have received a license to carry out insurance activities are recognized as insurers.

Therefore, in contractual insurance relations only the legal entity, which is given the opportunity to carry out its insurance activity only after obtaining a special permit (license), can be on the insurer's part, indicating the presence of special legal capacity in legal entities – insurers. Moreover, a special legal capacity determines the presence not only the status of a legal entity in insurance organizations, but also the status of a financial institution, in accordance with Article 2 of the Law of Ukraine "On Financial Services and State Regulation of Markets of Financial Services".

Licensing of insurance organizations is carried out in accordance with the Law of Ukraine "On Licensing of Economic Activity Types"[21] and the Resolution of the Cabinet of Ministers of Ukraine "On Approval of Licensing Conditions for the Provision of Financial Services (except for professional activities at the securities market)"[22] and is necessary to verify the compliance of the legal entity, its assets and founders to requirements for subjects of insurance.

Part 2 of Article 38 of the Law of Ukraine "On Insurance" stipulates a clear division of insurers into those who have received a license for life

[20] 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.

[21] Закон України «Про ліцензування видів господарської діяльності» від 2 березня 2015 р. № 222-VIII // Відомості Верховної Ради України. 2015. № 23. Ст. 158.

[22] Ліцензійні умови провадження господарської діяльності з надання фінансових послуг (крім професійної діяльності на ринку цінних паперів), затверджені постановою Кабінету Міністрів України від 7 грудня 2016 р. № 913. URL: http://zakon.rada.gov.ua/laws/show/913-2016-%D0%BF (дата звернення: 25.12.2018).

insurance and those engaged in other types of insurance. The combination of these types of insurance is prohibited by law. It is worth noting that such a division of insurance organizations corresponds to international experience and indicates their clear specialization in the division of insurers for "Life insurance" and "Non-life" or "General insurance"[23]. At the same time V. M. Nikiforak points out that, unlike property and personal insurance, some types of which require a special license, one general license is issued for all types of liability insurance. The exception is civil liability insurance of a nuclear installation operator because an insurance company must obtain an individual license to carry out such insurance[24].

So, the types of insurance, which an insurer has the right to carry out, are indicated in the license. In accordance with clause 5 of Article 1 of the Law of Ukraine "On Licensing of Economic Activity Types", a license is a record in the Unified State Register of Legal Entities, Natural Persons-Entrepreneurs and Public Formations about the decision of a licensing authority regarding the existence of the business subject's right to carry out a type of economic activity subject to licensing. Issuance of licenses to insurers for carrying out insurance activity and carrying out of inspections for their compliance with the issued license according to Article 36 of the Law of Ukraine "On Insurance" is carried out by the authorized body, which is the National Commission, carrying out state regulation in the field of markets of financial services.

Licensing of mutual insurance companies is determined by the state task of preventing the emergence of unfair insurers at the insurance market and ensuring protection of the insured parties' interests[25]. 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 principles of joint responsibility of members for its results and carried out on a nonprofit basis[26].

[23] Страхування: навч. посіб. / Т. А. Говорушко, В. М. Стецюк; за ред. Т. А. Говорушко. К., Львів: «Магнолія 2006», 2014. С. 30–31.

[24] Никифорак В. М. Договір страхування відповідальності: автореф. дис. ... канд. юрид. наук: 12.00.03; НАН України, Інститут держави і права ім. В. М. Корецького. К., 2002. С. 7.

[25] Міловська Н. В. Корпоративні відносини у сфері взаємного страхування // Право і суспільство. 2017. № 5-2. С. 84.

[26] Дадьков В. Н. Взаимное страхование / В. Н. Дадьков, К. Е. Турбина. М.: Анкил, 2007. С. 55.

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. So, the insurance activity in Ukraine is carried out, with minor exceptions, by insurers – residents of Ukraine having not less than three participants in its composition. The subject of insurer's activity may be insurance, reinsurance and financial activities related to the formation, allocation and management of insurance reserves only. These activities are allowed to be performed in the form of service provision to other insurers on the basis of concluded civil law contracts, if this is directly related to the specified types of activity, as well as any operations for the provision of own economic needs (Article 2 of the Law of Ukraine "On Insurance"). In turn, insurers, carrying out life insurance according to Article 2 of the Law of Ukraine "On Insurance" can provide loans to the insured who have concluded life insurance contracts. The procedure, terms of issue and the amount of loans as well as the procedure for forming a reserve for covering possible losses is established by the Authorized body with the approval of the National Bank of Ukraine. According to Article 30 of the Law of Ukraine "On Insurance", the minimum amount of insurer's statutory fund (guarantee deposit) carrying out insurance activities other than life insurance is set in the amount equivalent to 1 million Euro, and for the insurer who carries out life insurance – 10 million Euro according to the currency exchange rate of Ukraine.

Compulsory insurance can be carried out by the insurer only on condition that the procedure and rules for its performance determined by the Cabinet of Ministers of Ukraine are followed as well as a standard form of the contract, special conditions of licensing, the amount of insurance sums, maximum rates of insurance tariffs or the methodology of actuarial settlements, if otherwise is not specified by law (clause 49 Licensing conditions for conducting economic activities for the provision of financial services (except for professional activities at the securities market). So, if a certain type of insurance is attributed by the Law of Ukraine "On Insurance" to the compulsory one, then in accordance with Clause 12 of the Licensing Conditions for conducting economic activities for the provision of financial services (except for professional activities at the securities market), the insurer (applicant of the license) on the date of

document submission for obtaining a license should carry out insurance activity on the insurance contract conclusion in each reporting quarter, not less than two years (eight reporting quarters). In turn, in order to obtain a license for compulsory insurance of civil law liability of owners of motor transport vehicles, the insurer (license applicant) must additionally have experience in settling insurance claims and payment of insurance indemnity for at least ten such contracts.

Therefore, the general requirements for insurers carrying out insurance, are as follows: a) the creation of an insurer only in a definite organizational legal form (joint stock, full, limited company or a additional liability company); b) there must be at least three participants of the insurer; c) possession of a license for insurance; d) observance of requirements regarding the amount and procedure of the authorized capital formation; e) exceptional nature of the insurer's activities (insurance, reinsurance and financial activities related to the formation, allocation and management of insurance reserves); e) inclusion in the list of financial institutions in accordance with the Law of Ukraine "On Financial Services and State Regulation of Markets of Financial Services Markets"; e) the experience in the insurance activity conduct with the conclusion of insurance contracts with the aim of carrying out compulsory insurance. At the same time, as a party to the insurance contract, the insurer is a legal entity, being specially created for the provision of insurance services and having received a license in accordance with the established procedure, undertakes to fulfill obligations, in accordance with the terms and conditions of the contract or orders of the law, to make an insurance payment (insurance indemnity) to the insured or beneficiary as a result of the occurrence of a particular event (insured event). Since the moment of state registration of an insurance organization and the issuance of a license for the right to provide certain types of insurance, the insurer is legally capable and able to do so. The insurance organization has a general legal capacity of a legal entity with a special scope pf capacity as a financial institution, since it is the obtaining of a license that enables them to carry out insurance activities, that is, to acquire rights and bear responsibilities in the process of insurance by their actions.

Obligations on insurance in mutual insurance companies arise from corporate relations, namely, relations of membership (participation in a company). Therefore, only its participants (members) can use services of

the company in insurance of certain interests. Corporate interest is the basis of building a membership in the company.

The object of corporate legal relations is an actual behavior of a corporate law holder in the exercise of their rights and obligations. Therefore, corporate legal relations contain elements of both property (payment of insurance payments) and non-property relations (participation in the activities of general meeting, its other bodies in the case of election to them), the parties construct them on the principles of legal equality of parties, based on the requirements of civil law and local acts. Such relations do not have the nature of power and subordination and therefore are not administrative-legal ones.

The rights and obligations of members of non-profit insurance organizations are determined by the specifics of the latter, where each participant is the insured and the insurer at the same time. The connection between the participants' rights and obligations is reflected in the part of implementation of insurance relations. This feature determines the specifics of their obligations: all participants jointly act as the guarantor of the insurance indemnity payment to each insured and, in the case of lack of funds they cover damage by paying additional contributions.

The general rights and obligations of the parties to the insurance contract are provided for by the Civil Code (Articles 988, 989) and the Law of Ukraine "On Insurance" (Articles 20, 21). Thus, according to the current legislation, the insurer under the insurance contract is obligated: to familiarize the insured with the conditions and rules of insurance; within two working days, as soon as it becomes known about occurrence of an insured event, to take measures for execution of all necessary documents for timely payment of insurance payment (insurance indemnity) to the insured; upon occurrence of an insured event, to make an insurance payment (indemnity) in the period stipulated by the contract. The insurer bears property responsibility for non-timely insurance payment (indemnity) by paying a penalty (fine) to the insured, the amount of which is determined by insurance contract conditions; to compensate the 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; upon the request of the insured in case when the insured carries out measures that reduce the insurance risk, or in case of an increase in property value, to renew the insurance contract; not to disclose

confidential information about the insured and their property status, except in cases stipulated by the legislation of Ukraine. The insurance contract can stipulate other insurer's obligations as well.

Therefore, the insurer's primary obligation when concluding an insurance contract is *to familiarize the insured with the conditions and rules of insurance*. If the insurer and the insured have concluded an insurance contract, the further reference of the latter to the fact that they were not familiar with the relevant rules, should not be taken into account as a rule[27]. However, as Yu. A. Kulina notes, only the record about receiving of insurance rules by the insured is a valid proof that the insurer fulfilled obligations to hand over the relevant rules to the insured and they became obligatory for both parties to the contract. There must be a mark on the receiving of copy of insurance rules by the insured in insurance policy[28]. Thus, among the insurer's duties it is reasonable to envisage not the obligation to inform the insured on the insurance conditions, by the insurer's duty to hand over a copy of the insurance rules to the insured as an integral part of the contract.

The main insurer's obligation under the insurance contract is *making an insurance payment in a due period (insurance indemnity) stipulated by the contract upon occurrence of an insured event*. The Law of Ukraine "On Insurance" distinguishes the concept of "insurance payment" and "insurance indemnity". The insurance payment is a monetary amount paid by the insurer in accordance with the insurance contract conditions at occurrence of an insured event. Insurance indemnity is an insurance payment made by the insurer within the limits of the insured amount under the contracts of property insurance and liability insurance upon the occurrence of an insured event.

The insurance payment (insurance indemnity) is considered to be the insurer's liability, but not a form of civil law liability. Property liability may be incurred by the insurer for late payment of insurance payments in the form of a penalty, the amount of which is determined by the contract terms and conditions. The attention should be paid to the fact that in case of an insured event occurrence under an insurance contract of civil liability, the insured can personally compensate for damages to the injured

[27] Цивільне право України. Особлива частина: підручник / За ред. О. В. Дзери, Н. С. Кузнєцової, Р. А. Майданика. 3-тє вид., перероб. і доп. К.: Юрінком Інтер, 2010. С. 325.

[28] Кулина Ю. А. Договір страхування каско автотранспортних засобів у цивільному праві України: автореф. дис. ... канд. юрид. наук: 12.00.03; Нац. ун.-т «Одеська юридична академія». Одеса, 2013. С. 7.

person, and then apply for compensation to the insurer who insured civil law liability.

Within two working days from the moment of receiving notice about occurrence of an insured event, *the insurer must take measures for execution of all necessary documents for timely insurance payment (insurance indemnity) to the insured*. Thus, in particular, in accordance with Part 3 of Article 13 of the Law of Ukraine "On the peculiarities of insurance of agricultural products with state support", the insurer is obliged within two working days, as soon as it becomes known about occurrence of an insured event, to take measures to execute all necessary documents for timely insurance payments and to draw up an insurance act, in which the following is noted: an evaluation of insured and uninsured risk impact on harvest; calculation method and data specified on the amount of losses; the size of the damaged area; the amount of losses incurred as a result of an insured event; additional expenses of the insured; calculation of insurance indemnity; parties' objections regarding the amount of the established damage. In case of partial damage to agricultural products, a preliminary evaluation of the damage caused as a result of occurrence of an insured event is carried out. After the end of a production cycle (agricultural year), the final evaluation of the damage is made and insurance indemnity is paid (Part 5, Article 13 of the Law of Ukraine "On the peculiarities of insurance of agricultural products with state support").

The insurer has the right to clarify the reasons and circumstances of an insured event. They can make the requests for information, connected with an insured event as well, to law enforcement authorities, banks, medical institutions and other organizations holding the information on insured event circumstances[29]. In return, these organizations are required to send responses to insurers for requests of information connected with an insured event, including data that is a commercial secret. In this case, the insurer is fully responsible for its disclosure, except for cases provided by law.

Upon submission of the application for payment and all necessary documents in accordance with the contract (rules of insurance), the insurer must consider the documents within the terms stipulated by the contract

[29] Цивільне право України: підручник: у 2-х т. / За ред. В. І. Борисової, І. В. Спасибо-Фатєєвої, В. Л. Яроцького. Харків: Право. 2011. Т. 2. С. 261.

(rules of insurance) and take one of three decisions: on payment, on refusal to pay or on conducting an insurance investigation. The insurer and the insured have the right to involve, at their own expense, an emergency commissioner – a person who determines the causes of occurrence of an insured event and the amount of damage before investigation of insured event circumstances. In Ukraine the activities of emergency commissioners are regulated by the Decree of the Cabinet of Ministers of Ukraine "On Approval of the Model Regulations on Organization of Emergency Commissioner Activities" on January 5, 1998[30].

According to the investigation results, the insurer recognizes the insured event occurrence, which is recorded in the insurance act (emergency certificate). According to Article 25 of the Law of Ukraine "On Insurance", insurance indemnity payment is made by the insurer in accordance with the insurance contract based on the statement of the insured (their successor or third parties) and the insurance certificate act (emergency certificate). The insurance act mentioned is made by the insurer or an authorized person (an emergency commissioner) in the form determined by the insurer (Article 990 of the Civil Code). In particular, according to Part 3, Article 13 of the Law of Ukraine "On the peculiarities of insurance of agricultural products with state support", an insurance act is made in two copies and signed by the insurer and the insured. The insurer can involve representatives of central executive authority in determination of the amount of damage and drawing up an insurance act, which ensures the state policy implementation in the field of supervision (control) in an agro-industrial complex, and/or central executive authority, which ensures the state policy implementation in the field of veterinary medicine. One copy of an insurance act remains with the insurer, the other – with the insured. In addition, when making an insurance act, the insurer and the insurer have the right to conduct an additional examination, appeal to any evidence documents to establish the causes and extent of damage. The cost of expertise is paid by the party requesting its conduct and is not included in the amount of insurance indemnity (Part 6, Article 13 of the Law of Ukraine "On the peculiarities of insurance of agricultural products with state support").

[30] Типове положення про організацію діяльності аварійних комісарів, затверджене постановою Кабінету Міністрів України від 5 січня 1998 р. № 8. URL: http://zakon4.rada.gov.ua/laws/show/8-98-%D0%BF (дата звернення: 17.11.2018).

Therefore, the insurer makes an insurance payment (insurance indemnity) based on the relevant condition stipulated in the insurance contract (voluntary insurance) or by law (compulsory insurance), as well as on the claim of the insured on occurrence of an insured event and an insurance act (emergency certificate) on the recognition by the insurer of the fact of insured event occurrence.

The occurrence of an insured event is not a definite ground for the insurance indemnity payment. *The insurer has the right to refuse to pay the insurance indemnity* in cases specified in Article 991 of the Civil Code and Article 26 of the Law of Ukraine "On Insurance". Relevant grounds can also be provided by the insurance contract, unless it contradicts with the law. The right to refuse to insurance payments means that, in the presence of a payment obligation, the insurer has the right to unilaterally refuse to comply with this obligation, but can fulfill it. As a rule, the list of grounds provided by the contract for insurer's refusal to insurance payment affects the value of insurance service, because insurance of the insured property interests with few grounds for refusal of the insurer to insurance payment is usually more expensive than insurance with a large number of grounds for such refusal.

By its nature, the insurer's refusal to pay insurance indemnity is a unilateral transaction, not requiring appeal to a court for non-performance of obligation to pay insurance indemnity[31]. The list of these grounds is not complete, as the law and the contract can be extended. At the same time, insurer's negative financial condition is not a ground for the refusal in insurance payment.

The grounds for insurer's refusal to insurance payments are as follows: a) intentional actions of the insured or a person in whose favor the insurance contract is made, aimed at the insured event occurrence; b) the commission of an insured citizen or other person in whose favor the insurance contract is made, an intentional crime that led to an insured event; c) the insured person's submission of knowingly false information about the insurance object or about the fact of the insured event occurrence; d) the insured person's untimely notification on the insured event occurrence without a legitimate reason or creation of an obstacle to the insurer in determining circumstances, nature and amount of damages;

[31] Соботник Р. В. Договір страхування цивільної відповідальності за шкоду, заподіяну джерелом підвищеної небезпеки: дис. … канд. юрид. наук: 12.00.03. К., 2015. С. 90.

e) the insured has previously received indemnity for property insurance from the person guilty of causing this damage; e) other cases stipulated by the legislation of Ukraine.

In general, the list of grounds provided by Article 26 of the Law of Ukraine "On Insurance" is not complete. The grounds for the insurer's refusal to make insurance payments can be other grounds determined by a lawmaker and stipulated by insurance contract conditions, for example, force majeure, military actions or other military events, terrorist act, mass disturbances, violations of public order, etc. In insurance practice, there are cases when insurers refuse to make insurance payments, referring to artificial (non-existent) grounds for violating the insurance contract conditions. However, the courts, establishing that the insured party duly fulfilled the insurance contract conditions: timely made insurance payments within the period established by the contract, timely informed the insurer of occurrence of the insured event, but the insurer, in violation of contractual obligations, did not make an insurance payment, satisfy the claim requirements for indemnification of the insurance payment amount[32].

The decision to refuse to make an insurance payment (insurance indemnity) is made by the insurer within the term not exceeding the term stipulated by rules of insurance, and the insured is informed in writing, with the justification of grounds for refusal. The insurer's refusal to pay the insurance indemnity may be appealed by the insured under the court procedure.

Unlike Article 991 of the Civil Code of Ukraine, providing grounds for insurer's refusal to the insurance payment, Article 266 of the Merchant Shipping Code of Ukraine stipulates the features of insurer's release from obligations under the contract. So, in case of insured event occurrence, the insurer has the right, by way of payment of the insurance full amount, to be released from further obligations under the maritime insurance contract. At the same time the insurer is obliged to notify the insured party about intention to use this right within seven days from the day of receiving from the insured the notification on insurance event occurrence

[32] Афанасьєв В. В., Погребняк В. Я., Янішен В. П., Бережна О. Д. Узагальнення судової практики вирішення господарськими судами спорів за участю страхових компаній (за матеріалами справ, розглянутих Харківським апеляційним господарським судом) // Актуальні питання цивільного та господарського права. 2013. № 5. С. 18–22; Постанова Харківського апеляційного господарського суду від 13.10.2008 р. у справі № 52/118-08 про стягнення страхового відшкодування. URL: https://register.dominus.kiev.ua/ (дата звернення: 18.10.2018).

and its consequences, and, moreover, is obliged to indemnify the losses incurred by the insured party solely for the purpose of prevention or reduction of losses before receiving the insurer's notification.

The term of insurance payment (insurance indemnity) for a certain insured event is stipulated by the contract concluded by the parties. In case of compulsory insurance, this term is directly indicated in relevant rules of compulsory insurance. Thus, in case of making a decision on payment of insurance indemnity, the insurer, not later than fourteen working days from the date of receipt of documents, prepares an act and not later than three working days from the date of its compilation, pays the insurance indemnity (clause 12 of the Procedure and rules of carrying out of compulsory insurance of civil liability of economic entities for damage that may be caused by fires and accidents at objects of high danger, including fire and explosive dangerous objects and objects, economic activity on which can lead to accidents of ecological and sanitary-epidemiological nature)[33]. In turn, the payment of insurance indemnity under the contract of compulsory insurance of civil liability for nuclear damage is carried out within the term not exceeding one month from the moment of the insured event occurrence (clause 3, Article 8 of the Law of Ukraine "On Civil Liability for Nuclear Damage and its Financial Provision"[34]).

Article 1194 of the Civil Code of Ukraine states that a person, who insured own civil liability, in case of insufficiency of insurance indemnity for full indemnification of damage caused by them, is obliged to pay the difference between actual amount of damage and insurance indemnity to a victim.

The insurer is obliged to indemnify the expenses incurred by the insured during occurrence of an insured event in order to prevent or reduce losses, if it is provided by terms and conditions of the contract, and if measures taken by them were reasonable, regardless of their consequences, that is, regardless of whether they achieved the goal

[33] Порядок і правила проведення обов'язкового страхування цивільної відповідальності суб'єктів господарювання за шкоду, яка може бути заподіяна пожежами і аваріями на об'єктах підвищеної небезпеки, включаючи пожежо– і вибухонебезпечні об'єкти і об'єкти, господарська діяльність на яких може призвести до аварій екологічного і санітарно-епідеміологічного характеру, затверджені постановою Кабінету Міністрів України від 16 листопада 2002 р. № 1788. URL: http://zakon4.rada.gov.ua/laws/show/1788-2002-%D0%BF (дата звернення: 11.01.2019).

[34] Закон України «Про цивільну відповідальність за ядерну шкоду та її фінансове забезпечення» від 13 грудня 2001 р. // Відомості Верховної Ради України. 2002. № 14. Ст. 96.

(whether the subject of insurance contract was rescued). Since such obligation of the insurer has a legal basis other than insurance indemnity, such expenses of the insured are subject to full compensation, in spite of the fact that in total with the insurance indemnity, they exceed the amount of damage caused[35].

The insurer is primarily concerned in taking actions that prevent the insured event, since under contract conditions; the insurer is obliged to compensate for damage that will be caused. Therefore, the insurer should assist the insured party in taking actions aimed at reducing possible losses. Moreover, the insurer is obliged, upon the insured party's request, if the insurer takes measures reducing the insurance risk, to renew the insurance contract (Part 5, Article 988 of the Civil Code of Ukraine, Article 20 of the Law of Ukraine "On Insurance").

The insurer is obliged not to disclose information about the insured and their property status, except in cases established by law. In this case, it is about information that forms an insurance secret, such as something that can be classified as personal, family, official, commercial or other secret, which is the subject of legal protection. Thus, an insurance secret according to Article 40 of the Law of Ukraine "On Insurance" is confidential information about the activity and financial condition of the insured – the insurer's customer, which became known to the insurer during relations with a customer or third parties conducting activities in the field of insurance, disclosure of which may cause material or moral harm to the customer.

The insurer bears responsibility under the current legislation for disclosure of information obtained in connection with insurance activities about the insured, beneficiary, and the third party. Confidential information on the activities and financial situation of the insured may be provided only upon written request of the court, as well as law enforcement and tax authorities regarding the operations of insurance of a specific legal entity or natural person under a certain insurance contract in case of initiation of a criminal proceeding against this natural person or legal entity.

In order to protect the insurer's interests in property insurance (including liability insurance) Article 993 of the Civil Code of Ukraine

[35] Цивільне право України: підручник: у 2-х т. / За ред. В. І. Борисової, І. В. Спасибо-Фатєєвої, В. Л. Яроцького. Харків: Право. 2011. Т. 2. С. 299.

and Article 27 of the Law of Ukraine "On Insurance" establish a rule according to which the insurer who paid insurance indemnity obtains *the right of claim within the limits of actual costs, which the insured or other person who received the insurance indemnity has to the person responsible for the damages incurred*. The right to claim, which is transferred to the insurer, is limited to the amount of insurance indemnity paid to the insured (beneficiary) by the insurer. Therefore, the insurer acquires the right to claim only on condition of insurance indemnity payment within the limits of actual expenses. Losses not covered by the insurance indemnity payment may be collected by the insured (beneficiary) independently. Thus, if insurance indemnity payment does not fully compensate the damage caused to the insured (beneficiary) (for example, the contract provides for a deductible franchise), then two claims may be demanded from someone who caused damage: the first one is the insurer's claim in the amount of the insurance indemnity paid to the victim, the second on is the victim's claim in the amount of that part of harm caused, which was not covered by insurance indemnity. At the same time the lost benefits are not reimbursed here (except in case when lost benefits are insured by the contract individually), since in accordance with Article 988 the Civil Code of Ukraine the insurance payment under the property insurance contract can not exceed the amount of actual losses, while other losses are considered insured if it is expressly stipulated by the contract [36].

Unfortunately, in practice, insurance companies often claim recourse in cases where a lawmaker provides the transfer of rights to the insurer under the subrogation procedure. Continuing the old tradition, insurers call such claims as regress claims, but not subrogation ones, and it does not correspond to the essence of legal relations arising in accordance with Article 993 of the Civil Code of Ukraine. Thus, the issue of differentiation the cases, when the law provides for the right of recourse, from the cases of subrogation, namely, the transfer of creditor's right, is extremely relevant.

It should be noted that in case of subrogation, there is only a change of persons in existing obligation (change of an active subject) with the preservation of obligation itself. Under recourse, one obligation changes

[36] Головачов Я. В. Суброгація у страхових правовідносинах: автореф. дис. … канд. юрид. наук: 12.00.03. Одеса, 2017. С. 15.

another one, but the transfer of rights from one creditor to another does not occur. Recourse in insurance arises in relation to a narrow circle of persons, and subrogation applies to any person responsible for the occurrence of an insured event. Moreover, subrogation enables the subjects to choose the time to exercise this right: for example, after payment of an insurance indemnity or during payment, as well as there are possible cases of subrogation use to the payment of insurance indemnity, that is, the insurer may file a lawsuit before the payment of an insurance indemnity to the court for the purpose of charging the caused harm from the victim in the part that the insurer must pay to the insured.

At subrogation, the insurer does not receive the right to indemnification for losses, but the right of claim, which the insured (beneficiary) has to the person responsible for the losses, compensated as a result of insurance. The limitation period for subrogation requirements should be calculated not from the moment of insurance indemnity payment, but from the moment of the insured event, since the change of creditor in obligation under the subrogation procedure occurs at the time of insurance indemnity payment, but the legal relations themselves between the insured and the actual party of damage – a person responsible for losses caused to the insured arise at the time of damage – an event that is an insurance event at the same time. In turn, as it is established in one of court cases by the Order of the Supreme Court of Ukraine on August 7, 2012, since according to Part 6, Article 261 of the Civil Code the limitation period for recourse proceeding begins from the day of the main obligation execution, then in this regard from the insurer's performance of own obligations under the contract of voluntary insurance, the insurer has the right to bring a recourse claim in the court [37].

In some cases subrogation use is not possible. Thus, an insurance company in liability insurance can not replace the beneficiary in obligation in order to exercise the right to claim to the party guilty of causing harm, because this party is the insured party particularly. Therefore, in this case, the institution of recourse is used. However, there are cases when the courts, approving decisions according to rules of Article 993 of the Civil Code of Ukraine, at the same time refer to Article 38 of the Law of Ukraine "On Compulsory Insurance of Civil Liability of

[37] Постанова Верховного Суду України від 7 серпня 2012 р. у справі № 3-31гс12. URL: http://zakon.rada.gov.ua/laws/show/n0005700-13 (дата звернення: 20.12.2018).

Owners of Ground Transport Vehicles" which provides that the *insurer who paid the insurance indemnity has the right to file a recourse action*[38]. Nevertheless, as legal literature notes, in contrast to subrogation, in which the legal relations are preserved in a slightly modified form, recourse is another new legal relations[39]. In case of recourse the obligation fulfillment (by a debtor particularly or a third party) has as consequence of its termination and the payer receives the right to claim in a new obligation. In subrogation, on the contrary, the obligation is not terminated, and the payer takes the place of a creditor in existing legal relations[40].

So, the insurer takes a peculiar place in contractual insurance relations since it is with insurer's actions that the achievement of the main goal is connected, in favor of which such legal relations arise, – the payment of a certain sum in the amount and in cases provided by the contract.

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[41]. It is worth noting that, at the Western European insurance market insurance cooperatives also operate along with mutual insurance societies, 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)[42].

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[38] Постанова Верховного Суду України від 28 серпня 2012 р. у справі № 3-38гс12. URL: http://zakon.rada.gov.ua/laws/show/n0005700-13 (дата звернення: 21.12.2018).

[39] Мартюк А. С. Загальна характеристика інституту регресних зобов'язань у цивільному праві України // Науковий вісник Херсонського державного університету. Серія: Юридичні науки. 2014. Вип. 6–1. Том 1. С. 178.

[40] Гриценко Г. Г. Множинність осіб у цивільно-правовому зобов'язанні: дис. … канд. юрид. наук: 12.00.03. Харків, 2016. С. 120.

[41] European Parliament resolution of 14 March 2013 with recommendations to the Commission on the Statute for a European mutual company (2012/2039(INI). URL: http://ec.europa.eu/enterprise/policies/sme/files/mutuals/prospects_ mutuals_ fin_en.pdf (Last accessed: 25.12.2018).

[42] 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.

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 the 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.[43]

For that reason Ukraine has a necessity in non-commercial insurance that will implement the principle of collective assistance of insurance participants. However, lack of gradual legal basis of mutual insurance companies' activity as well as similar practice of use, and above all, interpretation of normative acts creates a grave obstacle for their creation and proper functioning. Therefore, the procedure for creation, reorganization and winding up of a mutual insurance company should be detailed at the legislation level, the minimum number of members should be determined as well as their rights and obligations, voluntary admission and freedom to leave a company, grounds and conditions for termination of membership, and liability of members for insurance obligations. 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 the organizational, legal and economic foundations for their creation and activities[44]. Mutual insurance as an alternative to commercial insurance

[43] Стратегія розвитку страхового ринку України на 2012 – 2021 роки. URL: http://ufu.org.ua/ua/about/activities/strategic_initiatives/5257 (дата звернення: 28.12.2018) (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.

[44] 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.

provided by law should help in facilitation of real insurance protection of the insured (natural persons and legal entities) and provide them with quality insurance services.

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NORMATIVE AND LEGAL FRAMEWORK FOR ANTI-ORGANIZED CRIME IN UKRAINE

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INTRODUCTION

Organized crime is now a significant factor in increasing social tension and destabilizing social relations, impeding the recovery of the economy, the ordering of the consumer market, and the deformation of new forms of economic entrepreneurial relations. The processes of aggregation of economic and general criminal crime, leaders of criminal groups with corrupt officials of government and administration, and law enforcement agencies are intensifying.

Organized crime is currently regarded as a real threat to national security in connection with the inclusive nature of its impact on various spheres of public life. In recent years, officially recognizing the existence of organized crime in Ukraine, which poses a threat to the national security of the state, much has been done in terms of disclosing its essence, content, etc.

Attracting representatives of organized crime to criminal responsibility for acts recognized as a crime is a clear requirement of the present. However, not always a certain crime refers to its manifestations, although in its essence is such. The current system of accounting for detected crimes also does not foresee their distribution on this basis. Accordingly, modern criminological research and conclusions can not always be confirmed by existing statistical data. Official statistics do not allow to immediately trace the spheres of life of Ukrainian society, in which organized crime operates.

Organized crime is a complex set of criminal offenses, such as: the provision of illegal goods and services, carefully planned and coordinated fraudulent operations, theft, extortion committed by organized crime groups. The term «organized crime» is also used to identify individuals involved in the activities of groups, organized crime forms. Organized crime is a special social danger, a «peak of crime». The basis for distinguishing this type of crime, scientists consider the nature and degree

of interaction of criminals in the commission of illegal activities. It takes place on the basis of the unification of individuals, the delineation of criminal roles between them, the hierarchy of the system of relationships.

The tendency of recent years shows the growing interest of leaders of criminal groups to actively be included in legal commercial structures. Practice shows that they legalize their activities through the creation of various associations, joint ventures, intermediary organizations and cooperatives. The state's response to such activities is based on a defined strategy and according to developed state programs.

Modern dictionaries give this term «strategy» a broader meaning: the art of leadership of social processes, political struggle. In legal literature, this term refers to the art of combating crime and individual crimes, carried out on the basis of a general concept, the definition of goals and means of their achievement, the implementation of various measures.

According to the Law of Ukraine «On National Security of Ukraine» state policy in the areas of national security and defense is aimed at the protection of: a person and a citizen – their lives and dignity, constitutional rights and freedoms, safe living conditions; society – its democratic values, prosperity and conditions for sustainable development; the state – its constitutional order, sovereignty, territorial integrity and inviolability; territory, the environment – from emergency situations.

Among the priority directions of ensuring the national security of Ukraine the state also defined the sphere of counteraction of crime, in particular organized crime, and identified the main authorized entities. Coordination in the areas of national security and defense is carried out by the National Security and Defense Council of Ukraine. The Ministry of Internal Affairs of Ukraine is the central executive body that ensures the formation and implementation of state policy in the areas of ensuring the protection of human rights and freedoms, the interests of society and the state, combating crime, maintaining public safety and law and order.

The National Police of Ukraine is a central executive body that provides public security and order, protection of human rights and freedoms, interests of society and the state, counteraction to crime, and also provides services defined by law for persons who, for personal, economic, social reasons or as a result of Emergency situations require such assistance.

The National Guard of Ukraine is a military formation with law enforcement functions designed to carry out tasks for the protection and protection of life, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other illegal encroachments, public order and public security, as well as in interaction with other bodies – on ensuring the state security and protection of the state border of Ukraine, the cessation of terrorist activities, the activities of illegal paramilitary or armed formations, the body called criminal groups and organizations.

The Security Service of Ukraine is a state body of special purpose with law enforcement functions that provides state security, with the strict observance of human and civil rights and freedoms:

1) counteracting reconnaissance and subversion activities against Ukraine;

2) the fight against terrorism;

3) counter-intelligence protection of state sovereignty, constitutional order and territorial integrity, defense and scientific and technical potential, cybersecurity, economic and informational security of the state, objects of critical infrastructure;

4) protection of state secrets.

The National Security Strategy of Ukraine is a document that identifies the actual threats to the national security of Ukraine and the corresponding goals, tasks, mechanisms of protection of Ukraine's national interests and forms the basis for planning and implementation of state policy in the field of national security.

1. The concept and types of organized criminal groups

Organized forms of crime began to appear in Ukraine at the beginning of the 20th century, although in fact, before that separate associations of criminals could legitimately be attributed to expressions of organized crime in the modern sense of this phenomenon. In large industrial as well as seaside towns, communities of criminals were formed that were stable, distributed among themselves the spheres of influence and committed active resistance to the activities of state authorities aimed at their elimination.

Since the mid-1970s, at the UN level and later in the Council of Europe a number of international legal acts were adopted to 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 Financing Terrorism of 16 May 2005, European Union Strategy for 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 aforementioned international legal documents it is recognized as necessary:

– actively engage in intergovernmental cooperation in the field of counteraction to organized crime, exchange of information between law enforcement agencies on 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, 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.

In the first years of the existence of the Soviet state, an integral part of which Ukraine was over 70 years, the negative tendencies of the development of organized forms of crime deepened. This period is characterized by economic and social devastation, caused by exhausting first world and civil wars, revolutionary unrest. The main, direct preconditions for rallying the criminal world then became three circumstances: 1) the attempts of the state to forcibly eliminate market relations in the economy; 2) collapse of the state apparatus and the law-enforcement system; 3) the spread of persistent forms of selfish-violent crime.

In subsequent periods of the development of Ukraine organized crime gradually became more and more organized in nature. There was a specific criminal subculture. In the criminal environment there were

leaders, organizers, «criminal authorities», «law enforcement thieves» who propagated and disseminated the idea of unification of the criminal environment.

These processes became particularly intense due to the transition of Ukraine to market relations. The activities of organized criminal groups have increasingly penetrated the field of legal economic activity

Organized criminal gangs have not become a part of the scope of group and recidivism, gang formations. In essence, it has become a new qualitative phenomenon, characterized by the merger of various types of crimes into a single activity. Separate socially dangerous acts in this case – only certain operations of more complex criminal activity. There is a system of multilevel, persistent criminal ties that lead to a concentration of crime. The basis of organized crime lies in the mercenary motivation of behavior not only of an individual, but of entire social groups, which is aimed primarily at enrichment, violation of the generally accepted principles of distribution of national income. Various unlawful means carried out the privatization of state and communal property.

Qualitatively organized crime groups are characterized by increasing penetration into the economy, primarily in its core industries, strategically important cost-effective enterprises; an attempt to establish control over the production, supply and sale of certain types of raw materials, goods, services, etc. with the participation of responsible employees of the sphere of economic activity, financiers, managers.

Some of the «criminal authorities» and the leaders of the criminal environment,which had traditionally coordinated and controlled the crimes of a general criminal nature, shifted the emphasis from open criminal criminality to the field of criminal entrepreneurship and economic business.

Organized crime often uses the most severe forms of violence: murder, causing severe bodily harm, illegal deprivation of liberty, etc. Violence, used as a means of combating criminal groups among themselves, is a means of intimidating and physically removing witnesses, journalists, politicians, etc., often with the use of weapons.

As many scientists point out, organized crime groups have the following features: significant quantitative composition (and this is not a simple group of people, but a peculiar hierarchically constructed criminal association), stability, a clear division of responsibilities between their

members, an orientation towards a common indefinitely long criminal activity, its planning, the division of spheres of influence, the existence of a system of protection against state social control, information and technical security.

Based on the analysis of the typologies outlined in the scientific literature, organized criminal groups can be identified according to several criteria, namely: 1) for criminal-law grounds; 2) by the nature of the participants; 3) by the level of corrupt connections; 4) by the nature of structuring; 5) the territorial prevalence of activities; 6) by the nature of the occurrence; 7) in the presence of a legal cover of activity; 8) in the direction, content and specialization.

According to criminal law, the following types of organized criminal groups can be singled out: 1) an organized group; 2) Pentecost organized group (Part 4 of Article 303 of the Criminal Code of Ukraine); 3) an organized group established in the penal institution for the purpose of terrorizing the convicts or an attack on the administration (Article 392 of the Criminal Code of Ukraine); 4) a gang (Article 257 of the Criminal Code of Ukraine); 5) the law is not foreseen by a paramilitary or armed formation (Article 260 of the Criminal Code of Ukraine); 6) a group whose activity is carried out on the pretext of preaching religious beliefs or performing religious rites and is combined with harm to people's health or sexual mischief (Article 181 of the Criminal Code of Ukraine); 7) a terrorist group or a terrorist organization (Part 4 of Article 258 of the Criminal Code of Ukraine); 8) a criminal organization (Article 255 of the Criminal Code of Ukraine); 9) a transnational organization engaged in violating the law of the order of transplantation of organs or tissues of a person, seizure of a person by coercion or deception of its organs or tissues for the purpose of their transplantation or illicit trafficking in human organs or tissues (Part 5 of Article 143 of the Criminal Code of Ukraine).

By the nature of the participants it seems possible to identify the following types of organized criminal groups: 1) teenage youth; 2) traditional «thieves»; 3) situational and criminal; 4) «new» criminal; 5) the «white man»; 6) mixed.

By the level of corrupt bonds it is possible to allocate the following groups: 1) non-corrupted; 2) low-corrupted groups; 3) medium corrupted; 4) highly corrupted.

By the nature of structuring, organized crime groups can be classified into: 1) poorly structured; 2) medium-structured; 3) have not been traditionally structured; 4) rigidly traditionally structured; 5) rigid organizationally structured; 6) structured according to the network type.

According to the territorial prevalence organized groups (organizations) can be: 1) local (within the administrative district, the city); 2) regional (on a scale of one area); 3) interregional (on a scale of several areas); 4) national scale (operating within the whole country); 5) international (refers to those related to the criminal structures of other countries).

Depending on the direction, content and specialization of criminal activity, three types of organized community groups are distinguished: 1) groups that specialize in committing common criminal crimes in conjunction with the organization of gambling, extortion, kidnapping, trafficking, etc.; 2) community of economic, commercial, financial orientation, which parasitize on the official structures of society; 3) mixed-type communities that combine the features of the first two organized criminal groups.

Organized criminal groups of economic orientation – this is, as a rule, the unification of specialists and officials of the authorities and management on the basis of common criminal activity. Socio-psychological peculiarities of such groups is that they are created by experienced organizers. Their structure largely formalizes the structure of the organization where it was created. Relations between members of the group often consist in the fact that individual participants do not know the amount of criminal activity in general. Delaying the implementation of cardinal measures to counteract criminal gangs in the economy contributes to their development, creates the preconditions for reproduction, adaptation to new political, socio-economic and other factors, increases the likelihood of communication with state and law enforcement agencies, causes the feeling of impunity in its members, independence and security.

By the nature of the emergence can be identified the following groups: 1) family-clan groups; 2) household allowance; 3) learning environment; 4) sports environment; 5) penitentiary environment; 6) service and labor environment; 7) marginal environment; 8) professional criminals.

The sign of the legal cover of the activity of criminal groups allows to allocate: 1) criminal groups without legal cover; 2) criminal groups that have a legal cover.

The concept of organized crime is formulated in the current Law of Ukraine «On the Organizational and Legal Foundations of Combating Organized Crime» and includes the totality of crimes committed in connection with the creation and operation of organized criminal gangs. There are about 150 scientific definitions of organized crime, the generalization of which with the formulation of a certain unified concept is quite problematic. Taking into account the listed characteristic criminological signs of organized crime, it can be defined as follows. Organized crime is a unification of the criminal environment for committing crimes on a scale of a particular region, a separate branch of the economy through the formation of stable, united hierarchically constructed criminal groups focused on long-term joint criminal activity in order to receive constant significant income, often with the disguised use of official economic and organizational structures, as well as corrupt elements of the state apparatus.

This definition has a predominantly criminological character and reproduces the directions of counteraction to this crime.

In the orders of the Prosecutor General of Ukraine on the activities of the prosecutor's office for counteraction and prevention of organized crime, it is noted that the prosecutor's offices should pay special attention to complying with the requirements of laws on preventing the occurrence of organized criminal gangs; establishing their corrupt connections with civil servants, officials of the authorities and administration; legalization of proceeds from crime; the use of organized crime in their interests of business entities, organizations, institutions, mass media, public associations, as well as to ensure the proper organization of oversight of observance of laws in the conduct of operational and investigative activities, measures for the timely detection, termination and disclosure of crimes.

The organs of the prosecutor's office in accordance with the requirements of the Constitution of Ukraine, the Laws of Ukraine «On Prosecutor's Office», «On Operational Investigative Activity», «On the Organizational and Legal Foundations of Combating Organized Crime»

are authorized to oversee the bodies conducting operative-search activity and operational-search prevention.

Compliance with the law in criminal procedure, which is carried out in the form of inquiry, is also subject to prosecutorial supervision. An important component of the criminal procedure of the inquiry agencies, investigators, prosecutors is the identification of the causes and conditions that contributed to the commission of the crime by organized criminal groups (Articles 23, 23-1, 23-2 of the Code of Criminal Procedure of Ukraine).

According to Art. 23-2 of the Code of Criminal Procedure of Ukraine, if it has for the same reasons, makes a separate decision (decree), which draws the attention of state bodies, public organizations or officials to the facts established in the case of violations of the law, the causes and conditions that contributed to the commission of organized crime crimes groups and require action to be taken.

The Criminal Procedure Law empowers the inquiry authority, investigator, prosecutor to establish the causes and conditions that contributed to the commission of the crime, to submit to the relevant state body, public organization or official an application for taking measures to eliminate these causes and conditions.

The study of criminal cases has shown that many of them fail to establish an entire branched system of criminal acts of organized groups and identify their leading core and corrupt connections in higher levels of government. This is due to insufficient attention to these issues during the rapid development of such groups. One of the mistakes at this stage is the lack of a large-scale criminological, economic, financial and economic analysis of the state of the relevant sectors of the economy that became the objects of criminal activity.

Previous work of the governing bodies of these economic objects, as well as control and law enforcement authorities for their inspections, issuance of permits, etc. is not analyzed properly.

Subjects of counteraction to organized crime can be divided into two groups: 1) bodies for which activities to combat organized crime is one of the main functions; 2) bodies that carry out such activities only in the course of performing their basic functions, which are not directly related to the fight against organized crime.

The first group of subjects includes the Main Department for Combating Organized Crime of the Ministry of Internal Affairs of Ukraine, the Main Department for Combating Corruption and Organized Crime of the Security Service of Ukraine. The Office of the Prosecutor General of Ukraine, as part of the Main Department for the Supervision of Law Enforcement, the Office for the Supervision of the Enforcement of Laws acts by the special units and other state bodies fighting the organized crime and corruption in the conduct of operational-search activities, inquiries and pre-trial investigation.

Consideration of the organizational principles of preventive activities involves: a clear definition of its goals and objectives, methods and methods for their solution; availability of appropriate resources; work planning; coordination of the efforts of the involved actors. Market relations, unlike the economic system that existed in the country with its rigorous control, the mechanisms of distribution from top to bottom, is based on competition, profit making. It is quite natural to shake off the planned principles of state influence on the economy, the mechanisms of regulation of most spheres of life used by the former republics of the USSR. Such a state of affairs could have had no effect on the planning of work on the prevention of crime.

The constant emergence of new forms of socially dangerous activity of organized criminal groups requires an appropriate extension of the system of preventive measures that would reduce the possibility of committing crimes. At the same time, the lack of legal, financial, personnel and other conditions for the implementation of preventive activities requires the search for a variety of ways to increase competence in managing the processes of counteraction to organized crime, making sound and well-considered decisions. That is why the importance of scientifically grounded, highly effective methods of managing the processes of preventing organized crime is increasing.

Prosecutorial supervision provides for the use of the powers given to the prosecutor to stop violations of the law, to take measures to prevent them, to bring to justice the persons who violated the law, restoration of rights and legitimate interests of citizens, etc. For fulfillment of the requirements of Articles 17, 18 of the Law of Ukraine «On the Organizational and Legal Foundations of Combating Organized Crime» by the central apparatus and their subdivisions on the ground of the

National Bank of Ukraine, the Ministry of Finance of Ukraine, the State Customs Service of Ukraine, the State Control and Revision Service of Ukraine, the State Property The Antimonopoly Committee of Ukraine, the State Border Guard Service of Ukraine, as well as other ministries and departments that have control powers within the bounds of their responsibilities regarding interaction with special units for combating organized crime, supervision is carried out by the branch office of the General Prosecutor's Office of Ukraine.

Public prosecutors must pay particular attention to the effectiveness of the provision of assistance by the said government agencies to special forces; participation in joint events; informing about found illegal actions of legal entities and individuals, testifying to the organized criminal activity or creation of conditions for this, as well as the use of the information received for the timely detection, termination and prevention of such activity. On the basis of the results of mutual verification and verification of the legality of the decisions made on the materials submitted from the supervisory authorities, make the relevant certificates.

To date, it is not everywhere at all and not fully guaranteed that decisive measures are taken to stop the activities of organized criminal groups and to eliminate their economic base by checking compliance with the legislation when corporatization of enterprises that are important for the economy and whose state share is transferred to management of holding and others companies. Rarely, concerted measures are being taken to detect the facts of concealing tax revenue, legalization of proceeds from crime, including using fictitious enterprises, blocking their settlement accounts, canceling state registration, and withdrawing from the shadow circulation of funds and commodities values.

The determining role of the prosecutor's office in counteracting organized crime belongs to the fact that the prosecutor's office is a universal law-enforcement organization. Through its supervision, it checks and assesses the implementation of legislation aimed at combating organized crime in the country, both from the state, first of all law enforcement agencies and non-state actors of prevention and prevention.

In the course of the implementation of the prosecutor's oversight of the enforcement of laws, the prosecutor's offices have the opportunity to expose the facts of corruption in executive and representative bodies of state authority, local self-government bodies, control and law enforcement

bodies. In the course of so-called supervisory inspections, the prosecutor's office reveals the facts of offenses, which greatly enhances the preventive effect on the negative phenomena being investigated.

The effectiveness of counteraction to crime depends to a large extent on how diverse and complex the approach to solving this problem is, to what extent the joint activity and contact between law enforcement and controlling bodies in combating various manifestations of organized crime are established.

The bodies that carry out state control are the controlling bodies that carry out inter-departmental control. The range of issues that the supervisor has the right to audit is rather narrow, specialized, clearly tied to the tasks facing such an authority. In accordance with the given powers, special control bodies supervise the observance of the mandatory rules in various areas of activity: industry, agriculture, transport, nature protection, etc. Legislative consolidation of the control powers of these bodies provides various normative documents: laws and regulations.

The controlling authorities exercise control in the form of inspections (examination and study of certain areas of financial and economic activity, the results of which constitute a certificate or memorandum); planned and unscheduled audits (documentary control of financial and economic activity, the results of which is an act); Reconnaissance reports, as well as surveys, raids, reviews, etc.

The supervisory authorities should include various state inspections and services, the main task of which is to carry out state control in one or another field of activity. A special feature of the fight against organized crime is the clear interaction between the controlling bodies and the prosecutor's offices in detecting and investigating crimes committed by organized criminal gangs.

Coordination of the work on combating organized crime rests with the Prosecutor General of Ukraine and his subordinate prosecutors.

This control is in the specialized subject of control, as well as in the absence of a departmental interest in its results.

2. The criminal-law basis for counteraction to organized crime

The norms that can and should be applied in case of revealing expressions of organized crime are contained both in the General and

Special Parts of the Criminal Code of Ukraine. With regard to the general foundations of responsibility for any crime, they are always unchanged.

Any crime is committed by a certain subject. In addition, a certain person can act completely independently or in association with someone to varying degrees. On this basis the legislation bases most of the specifics of the responsibility of a particular person for a specific act. Taking into account the development of the rules on complicity as an intentional joint participation of several subjects of the crime in the commission of a willful crime, the legislator indicates that the accomplices of the crime, along with the executor, is the organizer, instigator and accomplice.

This general provision applies to any crime with all possible variations of participation of the indicated accomplices. Part 3 of Article 27 of the Code of Civil Procedure, along with the indication that the organizer is the person who organized the commission of the crime (crimes) or directed its (their) preparation or commission; it is indicated and that the organizer is also a person who formed an organized group or a criminal organization or managed it, or a person who provided financing or organized a concealment of the criminal activities of an organized group or a criminal organization.

Such an instruction should oblige every practice that has encountered in its work with a crime that follows the presence of an organizer for the mandatory establishment of whether he has in this case a case with the manifestation of the activities of an organized group or a criminal organization.

Thus, modern criminal law recognizes the person who committed the crime as having committed one of the following acts:

– organized the commission of a crime (crimes);
– directed its (their) training;
– directed its (their) commission;
– created an organized group or criminal organization;
– performed the function of its head;
– funded its activities;
– organized the concealment of its criminal activity.

Under certain conditions, the particular crime itself must be regarded as committed by a group of persons, a group of persons under a prior conspiracy, an organized group or a criminal organization.

Although scientists have repeatedly indicated the need for a certain correction of definitions of what crimes are considered to be committed by an organized group or criminal organization, today they constitute the basis for the formation of data on the revealed expressions of organized crime.

Part 3 of Article 28 of the Criminal Code states: «An offense is recognized as committed by an organized group if several persons (three or more) who were previously arranged in a stable association to commit this and other (other) crimes participated in its preparation or commission, united by a single plan with the distribution of functions of the group members aimed at achieving this plan, known to all members of the group».

That is, the commission of an offense by an organized group is possible in a group of at least three participants (which corresponds to the justification of the occurrence of elements of organization between them), which had previously agreed (the legislator used the term organized) about the commission of at least two crimes (a connection between the two), for this purpose and they shared each of their functions among themselves (obviously the legislator has in mind a role, as it is stated in Article 27 of the Criminal Code of Ukraine, however, to accomplish, to achieve a single, known to all the group members plan, and not predetermined criminal activity in general. At the same time, the legislator points out that such a grouping of the group must be stable, but again it is obvious, at least until the achievement of the same unified plan of crime identified by them.

Given that this norm takes the place of the Criminal Code of Ukraine as one of the bases of counteraction to more and more active organized crime, elements of stability in such an organized group will be understood, the commission of not one, but the system of crimes and awareness of all participants in the commission of these crimes, combined by a unified plan . But it should be noted that the use in criminal law, especially in the Common part of the Criminal Code of Ukraine of such evaluative criminological concepts does not contribute to a real counteraction to organized crime.

In addition, only a small fraction of organized crime will fall under these characteristics, and the requirement for awareness among all group members about the plan of its two or more crimes further complicates the

issue of their evidentiary confirmation. In addition, it is understood that this is complicity and committed intentional offenses according to the plan, that is, all participants in this group know exactly what they are participating in. For the purpose of self-preservation, the organizational-managerial link in the structure of organized crime is far from eager to report on the plans of its activities to all its ordinary members.

However, for today, in order to recognize that a crime was committed by an organized group, it is necessary to establish all of its features.

If, conversely, draw attention to the indication in the norm of the law that an organized group is a group of individuals that are united by a single plan with the distribution of functions, and execute them in order to achieve this plan, known to all members of the group, it is quite logical to assume that this means the commission of one crime, though thought-out, continued, and not at least two. At that time, the application of the norm of committing a crime in complicity with the division of roles would be simpler and could be applied to a greater number of crimes, which are manifestations of both the activities of organized crime, and not only it. Such a norm could be considered more in part as a more socially dangerous form of complicity in comparison with the commission of a crime by a group of individuals on the basis of a preliminary conspiracy on a particular one identified crime. It is the specificity of organized crime in concealing a significant number of their crimes, which in many cases does not allow at least two at the very least.

In addition, according to Art. 67 of the Criminal Code of Ukraine one of the circumstances, which imposes a penal code, recognizes the commission of a crime only as a «group of persons under a previous conspiracy (part two or three of Article 28)». The legislator for some reason under the group of persons under the previous agreement proposes to consider and Article 3, Article 28 – the commission of an offense by an organized group, in accordance with all the description envisaged by it. A certain «pull-up» in this case, one form of complicity under the other does not contribute to their clear and effective application. However, in imposing a sentence, the court can not recognize as imposing penalties circumstances not specified in part one of Article 67 of the Criminal Code of Ukraine.

In many articles of the Special Part, as an qualifying or especially qualifying attribute, an indication of its commission by an organized

group is used. However, on the one hand, in most cases, the legislator uses it to express the particular danger of committing this crime precisely in the manifestation of organized crime through the criminal activities of the most organized group or organized group as a structural part of the criminal organization (smuggling, seizure of hostages, illegal deprivation of liberty, trafficking in persons, robbery, extortion, legalization of proceeds from crime, etc.). But on the other hand, such an indication is not contained in all articles of the Special Part of the Criminal Code of Ukraine, which may relate to the manifestations of Ukrainian organized crime.

In the General Part of the Criminal Code, the legislator almost always speaks of an organized group or criminal organization inseparably and in terms of understanding who is the organizer and what should be their responsibility.

Part 4 of Article 28 of the Criminal Code of Ukraine is an indication of a criminal organization, the place of which in complicity is also considered as conditioned by the need for more active counteraction to manifestations of organized crime. In particular, it is noted that «a crime is recognized as a committed criminal organization if it is committed by a stable hierarchical association of several persons (five and more), whose members or structural units were organized by prior conspiracy for joint activities for the purpose of directly committing grave or especially grave crimes committed by the members of this organization, or the management or coordination of the criminal activities of other persons, or the provision of the functioning of both the criminal organization itself and other criminal groups».

Drawing attention to the definition of what crime should be considered committed by a criminal organization, it is immediately apparent that the legislator no longer uses the phrase «group of persons» or «several», but points to the unification of several persons at once, raising their number to n ‘ even more. Such an association should not only be sustainable, but also hierarchical and may have separate structural elements, which should also be pre-merged. Members of the association or its structural units must pre-arrange joint activities, the purpose of which must be: A) the direct commission of grave or especially grave crimes by the members of this organization; B) management or

coordination of criminal activities of other persons; C) ensuring the functioning of both the criminal organization and other criminal groups.

This definition contains many valuables, such as those dictated by international norms, which somewhat affect the speed, practicality and effectiveness of further prosecution of the members of such a criminal organization. There are no indications of committing an offense by a criminal organization in any of the articles of the Special Part of the Criminal Code of Ukraine as a qualifying or particularly qualifying attribute, as it is inherent in other forms of complicity, in particular regarding the commission of an offense by an organized group.

The legislator used the approach that provided for responsibility for the creation, participation in such a criminal organization, etc., as a separate crime in the field of crimes against public safety.

In accordance with the rules concerning the criminal liability of accomplices enshrined in Art. 29 of the Criminal Code of Ukraine the actions of the principle of individualization of punishment, in the case when the crime is committed with the distribution of roles, the situation is as follows. The organizer, the instigator and the accomplice are subject to criminal liability under the relevant part of Article 27 and the article (part of the article) of the Special Part of the Criminal Code of Ukraine, which provides for an offender committed by the executor. Contributors are not subject to criminal liability for acts committed by the executor if it was not covered by their intent.

Signs describing the identity of an individual accomplice of a crime are to blame only for this accomplice. Other circumstances aggravating the responsibility and stipulated in articles of the Special Part of the Criminal Code of Ukraine as signs of a crime affecting the qualification of the actions of the executor, shall be blamed only for the accomplice who was aware of these circumstances.

However, the issue of criminal liability of organizers and participants of an organized group or criminal organization was passed by the legislator in a separate article (Article 30 of the Criminal Code of Ukraine), which provides for the following. The organizer, as an organized group and a criminal organization, is liable to criminal liability for all crimes committed by an organized group or criminal organization, if they were covered by his intent.

Other members of an organized group or criminal organization are held criminally liable for crimes committed or committed by them, regardless of the role they committed in the crime of each of them. In fact, the greater burden of liability lies with the organizers, and with regard to the rest of the participants, they are responsible for the crimes they were involved in preparing or committing, regardless of the role they played.

Taking into account such a leveling in the General Part of the CCU of the fundamentals of the responsibility of the organizer of the organized group and the organizer of the criminal organization, it would be advisable to indicate in the CCU the responsibility not only for the creation of a criminal organization, but also for the creation of an organized group, its management or its financing, or concealment of its activities.

Regarding the separate responsibility for the creation of an organized group, the law provides Article 181 of the Criminal Code «Attack on the health of people under the pretext of preaching religious beliefs or performing religious rites», which provides for responsibility for such acts as «the organization or leadership of a group whose activities are carried out under the pretext preaching religious beliefs or performing religious rites, and combined with causing harm to people's health or sexual harassment and Article 392 «Acts that disrupt the work of penitentiary institutions», that is, «terrorist activities in penitentiary institutions or an attack on the administration, as well as the organization of an organized group for this purpose or active participation in such a group committed by persons serving sentence imprisonment or in the form of restraint of liberty». The aforementioned provisions also point to the understanding of organized groups by the legislator as a possible form of manifestation of organized crime.

As an explicit basis for bringing to criminal responsibility representatives of organized crime, in the active part of the Criminal Code of Ukraine in the Special Section, among crimes against public safety, it is precisely Article 255, entitled «Creation of a criminal organization», namely: «Creation of a criminal organization for the purpose of committing a serious or especially grave crime as well as the management of such an organization or participation in it, or participation in crimes committed by such an organization, as well as the organization, management or facilitation of a meeting (gathering) of representatives of

criminal organizations or organized groups to develop plans and conditions for the joint commission of crimes, material provision of criminal activity, or coordination of activities of associations of criminal organizations or organized groups – shall be punishable by imprisonment for a term of five to twelve years».

Of course, its provisions are too voluminous, there are many acts that do not contribute to its application, it should be divided into two separate articles or at least structured within one, but for today, the responsibility in this article is for the following groups of acts:

A) regarding the creation and criminal activity of a criminal organization:

– the creation of a criminal organization for the purpose of committing a grave or particularly serious crime;

– management of such an organization;

– participation in it;

– participation in crimes committed by such an organization.

B) for a meeting of representatives of criminal organizations or organized groups for a certain purpose, ie for:

– organization of the meeting;

– meeting management;

– facilitating the meeting.

The purpose of such a meeting of representatives of criminal organizations or organized groups may be:

– the development of plans and conditions for the joint commission of crimes;

– material provision of criminal activity of criminal organizations or organized groups;

– coordination of activities of associations of criminal organizations or organized groups.

That is, it is not only the responsibility of the organizer for the creation of a criminal organization, the article also contains an indication of elements essential to the fight against organized crime, such as participation in a criminal organization and participation in the crimes committed by it. Such an instruction distinguishes their responsibility from the other accomplices who will comply with the general rules of complicity.

In fact, today, this means that Article 255 of the Criminal Code should apply in all cases where the commission of a crime is a criminal organization or simply the discovery of the participant of a criminal organization – for participation in a criminal organization or participation in its crimes. However, in practice, this does not happen, which, accordingly, makes it impossible to obtain more or less reliable data on the activities of criminal organizations in Ukraine.

In addition, according to Part 2 of Art. 255 of the Criminal Code of Ukraine a person other than the organizer or the head of a criminal organization shall be released from criminal liability for the commission of an offense established by part one of this article if he has voluntarily declared a criminal organization or participated in it and actively contributed to its disclosure.

And according to Part 2. Art. 31 of the Criminal Code of Ukraine «Voluntary refusal of partners», are not subject to criminal liability in the event of a voluntary refusal by the organizer, instigator or accomplice, if they have turned away the commission of the crime or timely informed the relevant authorities about the crime that is being prepared or committed. That is, the organizer of the organized group does not have a separate responsibility for the creation of an organized group, it is not provided as a separate crime in the Special Part of the Criminal Code of Ukraine. In addition, the organizer is not subject to criminal liability and with the specified voluntary refusal, as well as the instigator and accomplice – members of the organized group.

As already noted among the articles of the Special Part of the Criminal Code there is no indication of the possibility of committing a crime as a criminal organization or a qualifying qualification. The only case of a similar mention is Article 143 «Violation of the lawful procedure for the transplantation of organs or tissues of man», where Part 5 provides for responsibility for «participation in transnational organizations engaged in such activities.» However, this refers to «transnational organizations», and not «transnational criminal organizations», which is precisely what the legislator means in this case, is not explicitly indicated.

Article 257 «Banditism» – «the organization of an armed gang for the purpose of attacking enterprises, institutions, organizations or individuals, as well as participation in such a gang or in the attack that they are

carrying.» Here obviously follows the analogy of building the norm as well as the creation of a criminal organization. In this case, the legislator, to a certain extent, distinguishes not the «creation», but the «organization» of the gang, participation in it and the participation in the crimes committed by it.

The meaning of «gang» is not disclosed in the code, and this concept is actually applied to both an armed organized group and an armed criminal organization, but it is worth noting that there are no special features of a gang, except for weapons, which the code itself does not contain.

Obviously, in order to comply with a certain unified approach to such definitions, and clarifying their essence, it would be worthwhile to record under banditry – «the creation of an armed organized group (criminal organization), participation in it ... in order ...».

Article 258-3 «Creation of a terrorist group or a terrorist organization» has also been formed, where the legislator already, for the first time, equates the responsibility for the creation of both «group» and «organization», and secondly, again does not reveal their essence. It is clear that these norms appeared in the Criminal Code of Ukraine as the fulfillment of the requirements of international obligations undertaken by Ukraine, however, taking into account the terminology of the Criminal Code of Ukraine, it would be more appropriate to indicate «Creation of an organized group or a criminal organization for the purpose of committing a terrorist act ...».

Also, Article 260 of the Criminal Code applies to «Creation of non-law-based paramilitary or armed formations» in a note which contains their understanding, nevertheless, the legislator uses one more new term «formations».

In addition, we can not but point out that the legislator uses the term «commissioned» to commit an offense, which may also apply to manifestations of organized crime. This applies to two acts such as intentional murder (Part 2, Article 115) and intentional grave bodily harm (Part 2, Article 121). To attribute such crimes to the manifestation of organized crime again it is necessary to establish separately the creation of a criminal organization, with all its features (five and more persons, stability, hierarchy, etc.), and to associate it with crimes committed to order.

Such procedural complexity with the application of criminal law aimed at counteracting organized crime leads to the fact that a large number of acts that clearly trace the activities of organized crime do not receive appropriate and proper qualifications remain unopened or closed for reasons of lack of evidence, and therefore, their representatives do not carry the full penalty of their actions, and the detected acts do not receive their respective reflection in the official statistical reporting. As a result, science criminology can not give a real, supported by figures criminological analysis of organized crime. Thus, the situation is formed where organized crime is manifested everywhere and actively discussed, however, according to official data, its activity is rather low.

Only according to the statistics for 2014, under Article 255 of the Code of Criminal Procedure «Establishment of a criminal organization» only 2 proceedings are recorded. But about «Assistance to members of criminal organizations and the hiding of their criminal activity» – art. 256 KKU, registered 42 proceedings.

It is unlikely that the participants of the two listed criminal organizations are assisting the parties, and such proceedings are not united. Banditry (Article 257 of the Criminal Code) – 11 proceedings; the creation of paranoid or armed formations not provided by law (Article 260 of the Code of Civil Procedure) – 414 proceedings. Only under Article 258-3 of the Criminal Code «Creation of a terrorist group or terrorist organization», 427 procedures were registered with the security agencies, 48 of them were terrorist financing (article 258-5 of the Code of Civil Procedure), smuggling of narcotic drugs, psychotropic substances, their analogues or precursors or counterfeit medicines means (Article 305 of the Criminal Code of Ukraine) – 150 procedures; illegal transfer of persons across the state border of Ukraine, (Article 332 of the Code of Civil Procedure) – 157 proceedings, etc.

From the above it is seen the probability that today law enforcement agencies are not actively using Art. 255 of the Criminal Code of Ukraine, or in all other cases (except for two recorded in accordance with this article), crimes committed by organized groups, terrorist groups or other complicity or alone.

Proceeding from the content of modern criminal law, manifestations of organized crime are more socially dangerous. In fact, it acts both through organized groups and through criminal organizations. The basis

of the criminal liability of their organizers and participants is quite different.

Article 255 of the Code of Criminal Procedure should be more actively applied by law enforcement agencies, in all cases when it is manifested as a criminal offense by a criminal organization or in the case of the very discovery of a participant in a criminal organization for participating in a criminal organization. In order to simplify the procedure for its use it is necessary to review the definitions of not only a criminal organization, but also an organized group, referred to in Art. 28 CCU in the direction of delimiting their criminological features from the subjective and structural and systemic basis of activity. Responsibility for creating and participating in an organized group should also be appropriate.

CONCLUSIONS

Organized crime contravenes existing social relations, causes or is capable of causing damage to the rights and interests of citizens, communities, the state and society as a whole, impedes the gradual development of the state.

The growth of crime occurs on the background of a rapid increase in its organization. This leads to mass creation and functioning in Ukraine of various types in its orientation, structure, scale of influence of criminal formations, which sometimes form integral systems that carry out continuous criminal activity, the main purpose of which is the illegal gaining of profits and profits.

Such activities are usually combined with providing criminals with special protection (invulnerability) from social control and legal influence on them through the use of such means as violence, torture, intimidation, blackmail, discredit, corruption, as well as penetration of the representatives of the criminal environment in official state and public (economic, power, administrative, law-enforcement) structures, investing in them significant, money-laundered money to bribe officials.

Therefore, crime, including organized crime, is well founded today as a real threat to the national security of the state, due to the comprehensive nature of its impact on various spheres of public life. The effectiveness of the national security strategy depends on conducting systemic internal

reforms that should be aimed at creating a flexible, capable and democratic system of public administration.

Part of such activity of the state should be constant monitoring of legislation aimed at counteraction to organized crime, its current challenges, clarity and unambiguous application. Therefore, in order to more effectively counteract organized crime through the action of criminal law, their terminology should be united with reflection of the essential details and clear to the understanding and application.

SUMMARY

The article is devoted to the study of the legislative, in particular, the criminal-law basis for counteraction to organized crime in Ukraine. Organized crime is currently regarded as a real threat to national security in connection with the inclusive nature of its impact on various spheres of public life. Attracting representatives of organized crime to criminal responsibility for acts recognized as a crime is a clear requirement of the present. 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. It is specified that the part of such activity of the state should be constant monitoring of legislation aimed at counteraction to organized crime, its current challenges, clarity and unambiguous application. Therefore, in order to more effectively counteract organized crime through the action of criminal law, their terminology should be united with reflection of the essential details and clear to the understanding and application.

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STATE LANGUAGE POLICY IN UKRAINE: CONSTITUTIONAL AND LEGAL SUPPORT

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INTRODUCTION

Language as a socio-historical phenomenon, a means of human communication, thinking and expression (objectification of self-consciousness) plays, as is known, a decisive role in the process of formation of man as a person, his becoming a citizen, integration into a social environment, adoption of its norms, traditions, values, engagement in the achievements of culture, accumulation of knowledge, information and social experience. The potential of language, its richness and possibilities, being conditioned by the mentality of the subjects of social action, their worldview, world perception and world attitude, are fairly considered as the personification of centuries-old spiritual, intellectual and cultural achievements of the ethnic group, a powerful means of forming common sense values that are realized in the functions of language, its social purpose. For example, the consolidation potential of a language manifests itself, first of all, in promoting the development of ethno-national processes as universal ones, ensuring the unity of the people, asserting its uniqueness, eternity in Nature and Cosmos.

Important potential of language is also associated with its capabilities as a means of identifying various subjects of social action – individuals, ethno-national communities, nations, states, unions of states as supra-state entities. Accordingly, the hierarchy of linguistic identities can acquire different forms, presenting with that a peculiar integrity as a unity of defining attributes: a) basic, initial ones (personal self-determination); b) socio-group and socio-cultural ones (educational, religious, ethnic, national, political, age, gender, professional ones, etc.); continental, transcontinental, global ones (the European Union, the Council of Europe, NATO, UN).

Accordingly, state language policy can be understood as a combination of politico-ideological and legal and regulatory provisions, practical actions aimed at regulating language relations in a multi-ethnic society. The nature of the implementation of state language policy is

conditioned by the degree of centralization of power, as well as the form/type of state system – unitary, federative or confederative, which also implies the consideration of the challenges of globalization, primarily in terms of the rapid spread of widely used languages, which are narrowing down and in some cases supplanting some languages of indigenous peoples, titular ethnic groups, forming a multicultural society. In this case, the state carries out politico-ideological, organizational, legal, administrative and financial support of language policy.

1. Theoretical and Methodological and Constitutional and Legal Principles of the Development and Implementation of the State Language Policy in Ukraine

A peculiar paradigm of harmonization of the national language space is represented by the polylinguistic language model[1], which forms the fundamental theoretical and methodological basis for the formation of an atmosphere of tolerance, harmony and understanding, consolidation of a multilingual society by mastering the full diversity of languages of the national language space – from the lullaby, family and native, regional language of the minority to the language of the state (the official one). Accordingly, it can be argued that the whole set of languages used by citizens to meet their needs as means of communication, identification and social integration within a certain linguistic space, outlined by the officially defined state border, forms the generalizing notion of the «national language».

Theoretical and methodological foundations of the legal and regulatory realization of the aforementioned poly-linguistic language model are contained in works of domestic and foreign scientists: Havrylenko, I.M.[2], Kononenko, P.P. and Kononenko, T.P.[3], Mykhalchenko, M. I.[4], Nahorna, L. P.[5], Ryabchenko, V. I.[6], Bauman, Z.[7], Beck, U.[8], Tourain, A.[9] et al.

[1] Єрмоленко С. Я. Мова і українознавчий світогляд : монографія. К.: НДІУ, 2007. 444 с.

[2] Гавриленко І. М., Мельник П. В., Недюха М. П. Соціальний розвиток: навчальний посібник. К.: Академія ДПС України, 2001. 484 с.

[3] Кононенко П. П., Кононенко Т. П. Феномен української мови. Генеза, проблеми, перспективи. Історична місія. К.: Наша наука і культура, 1999. 136 с.

[4] Михальченко Н. И. Украинское общество: трансформация, модернизация или лимитроф Европы. К.: Институт социологии НАНУ, 2001. 440 с.

[5] Нагорна Л. П. Політична мова і мовна політика: діапазон можливостей політичної лінгвістики. К.: Світогляд, 2005. 315 с.

[6] Рябченко В. І. Мова як засіб творення соціальної дійсності. К.:Фітосоціоцентр, 2011. 244 с.

The solution of language problems in Ukraine, the implementation of state language policy is correctly associated with the use of the theoretical and methodological potential of legal ideology[10], philosophy and sociology of law[11], constitutional jurisdiction[12], law-making and legislative process[13], ensuring a stable development of the legal system and its social dimension[14], etc.

2. Historical and Legal Principles of Functioning of the Ukrainian Language as the State One

The prevalence of the Ukrainian language in the world, its state status in Ukraine is largely due to its established nature in time and space, the millennial history of use in various spheres of social and cultural life. It is well-known that during the time of the Kievan Rus, the Old Russian language as the prototype of the current Ukrainian language had a status close to that of the state language, being not only a means of daily communication, but also the language of state and private correspondence, chronicle writing, fine literature, records management, legislation and legal proceedings.

The aforementioned status of the Old Russian language was fixed, as is known, by the Volhynia Statute of 1566 – the Code of Laws of the Grand Duchy of Lithuania on the lands of Galicia and Western Volhynia of the XIV – the first half of the XVI century, which were under the control of the then Poland.

Translation into the Old Russian language of the so-called Piotrkow-Wislica Statutes of king Casimir the Great as a collection of legal norms of medieval Poland (1357), the functioning of the Old Russian language in the official business spheres of Lithuania, Volhynia, Bratslav and Kiev voivodships (provinces) as well as in the Moldavian Principality can be

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[7] Бауман Зигмунт. Индивидуализированное общество / Пер. с англ. под ред. В.Л. Иноземцева. М.: Логос, 2002. 390 с.

[8] Бек Ульрих. Общество риска. На пути к другому модерну / Пер. с нем. В. Седельника и В. Федоровой; Послесл. А. Филиппова. М.: Прогресс-Традиция, 2000. 384 с.

[9] Tourain A. Critique de la modernite. P.: Fayard, 1992. 431 p.

[10] Недюха М. П. Правова ідеологія українського суспільства: монографія. К.: "МП "Леся", 2012. 400 с.

[11] Костицький В. В. Захист суспільної моралі як функція сучасної держави: монографія. Дрогобич: Коло, 2013. 172 с.

[12] Селіванов А. О. Теорія і практика застосування конституційного права України. К.: Логос, 2016. 176 с.

[13] Копиленко О. Л., Богачова О. В. Законотворчий процес: стан і шляхи вдосконалення: кол. монографія у 2-х ч. К.: Реферат, 2010. 696 с.

[14] Оніщенко Н. М., Пархоменко Н. М. Соціальний вимір правової системи: реалії та перспективи: монографія / Відп. ред. Ю. С. Шемшученко. К.: Видавництво "Юридична думка", 2011. 176 с.

seen as an illustration of the international recognition of the aforementioned language, of its use as a means of interethnic communication.

In the XVII century, the Ukrainian and Belarusian languages, as is well-known, began to function as independent ones, having branched off from the Old Russian language as its self-sufficient analogues, whereas Moscovia only since the beginning of the eighteenth century, according to the special circular of Peter I, began to be called Russia. This event represents, in our opinion, the beginning of the functioning of the Russian language in its independent status, finds its further development in the fact that the correspondence of Bohdan Khmelnytskyi with Tsar of Moscow Alexei Mikhailovich was conducted in the Ukrainian language, whereas the correspondence of the latter with the former was conducted in Russian. Accordingly, the status of the Ukrainian language as the state one was not subject to doubt, considering, first of all, its free use in the activities of the general, regimental, sotnia (Cossack squadron) chancelleries, courts, records management of the Hetmanate's state institutions.

And only in course of time the Ukrainian language began to suffer all kinds of infringement, disappearing completely from the official use in the western lands in the XVIII century, whereas in the left-bank Ukraine the remnants of linguistic autonomy were eliminated in the early 80's of the same century. As is well known, printing books in Ukrainian, except for artistic texts and historical (literary) monuments, was prohibited by the Valuev Circular (1863) and the Ems Decree (1876), by more than 170 legislative acts in total that made it impossible to study Ukrainian, teach it and print in it[15].

Despite the infringements, official bans, colonial condition, the Ukrainian language, thanks to the efforts of its prominent representatives – I. Kotlyarevskyi, T. Shevchenko, I. Franko, L. Ukrainka, O. Pchilka, Ye. Hrebinka, H. Kvitka-Osnovyanenko, P. Kulish was established as a literary one with the corresponding phonetic orthography (P. Chubynskyi, M. Drahomanov), the grammar (O. Pavlovskyi) and vocabulary support (P. Biletskyi-Nosenko), which initiated the legitimate processes of literary linguistic self-identification of Ukrainians as a nation.

[15] Мовна політика в Україні // Мала енциклопедія етнодержавознавства / НАН України. Ін-т держави і права ім. В. М. Корецького; Редкол.: Ю. І. Римаренко (відп. ред.) та ін. – К.: Довіра: Генеза, 1996. – С. 173, 185.

Significant is the contribution of the Ukrainian People's Republic and the Western Ukrainian People's Republic, and later – of the Carpathian Ukraine to strengthening the Ukrainian language as the state one, ensuring equal rights of the languages of national minorities of Ukraine. The «Provisions on Ensuring the Equality of Languages and Promoting the Development of the Ukrainian Culture» adopted in July, 1927, guaranteed the status of the Ukrainian language which was close to that of the state one, which, however, did not protect Ukraine from the next 60 years of the official limitation of its use, or even frank neglect of the state-building potential of the Ukrainian language, its status as the state one, which led to the narrowing down of its functions, the denationalization of the Ukrainian people, and the artificial stifling of its development.

And only since the beginning of the 90s, the processes of sovereign development have contributed to the comprehensive formation of the Ukrainian language as the state one, its establishment as a national language – the language of an individual nation, which is spoken by the overwhelming majority of its representatives on the territory of the country and beyond – in Australia, the United Kingdom, Canada, the USA, Argentina, the Russian Federation, Kazakhstan, etc. The Ukrainian language «is one of the twenty most widely spoken languages of the planet and occupies one of the leading places in terms of linguistic perfection»[16].

3. The Current State of the Legal and Regulatory Support of the State Language Policy in Ukraine

The state language policy in Ukraine is carried out in accordance with the constitutional provisions of Articles 10, 11, 53 of the Fundamental Law of Ukraine, which guarantee the comprehensive development and functioning of the Ukrainian language as the state one in all spheres of public life, the free development, use and protection of the languages of national minorities, which finds its embodiment in promoting the consolidation and development of the Ukrainian nation, indigenous peoples and national minorities of Ukraine. The aforementioned provisions of the articles of the Constitution of Ukraine also guarantee the right to study in one's native language or to study one's

[16] Мусієнко Г. Мова українська // Етнократологічний словник / За ред. О. В. Антонюка, М. Ф. Головатого, Г. В. Щокіна. К.: МАУП, 2007. С. 368.

native language at state and municipal educational institutions or through national cultural societies[17].

The implementation of the state language policy is subordinated to the tasks of establishing harmonious social relations (balance of interests) in the sphere of application and free, legally-regulated functioning of languages in Ukraine by satisfying linguistic, cultural, educational, informational needs, observing the rights and freedoms of Ukrainian citizens.

The main principles of the implementation of the state language policy in Ukraine are:

– state protection and support, ensuring the development of the Ukrainian language, strengthening its state status, prestige and significance, expanding its sphere of functioning as a means of communication – interethnic and international one;

– ensuring the implementation of universal humanistic and democratic values as defining features of the social environment of non-conflict coexistence of the state (official) language and minority languages as languages of national minorities;

– comprehensive development and protection of the languages of national minorities as a personification of linguistic and cultural diversity, meeting the linguistic needs of representatives of different nationalities, ethno-national groups in terms of forming a national consciousness;

– ensuring the linguistic rights of citizens belonging to national minorities for studying in or studying of their mother tongues at state and communal educational institutions and various national-cultural societies;

– facilitating the study of languages of international communication, first of all, the official languages of the UN, promoting polylinguism as the initial «cell» of the state language policy.

The main areas of the implementation of the state language policy include, inter alia: a) promotion of linguistic diversity with respect to the recognition and enforcement of language rights of representatives of all nations, nationalities and national minorities living in a certain territory; meeting their linguistic needs; b) development of intercultural tolerance, formation of linguistic balance in the context of formation of Ukrainian society as a multicultural one, of prospects of its integration into the European and world socio-cultural and educational space; c) a

[17] Конституція України № 254к/96-ВР від 28.06.1996 р. // URL: zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

comprehensive development of the individual, including in terms of ensuring his/her mobility, the formation of the social space as a multilingual one.

The Ukrainian legislation also contains a number of definitions of defining terms that determine the essence of the state language policy. Thus, in particular, the Constitutional Court of Ukraine has determined that the state (official) language is a language to which the state has been granted the legal status of a compulsory means of communication in public spheres of the life of society. In this case, the state language is understood as the language prescribed by the legislation, the application of which is obligatory in exercise of powers by state authorities, local self-government bodies (united territorial communities), at state and communal enterprises, institutions and organizations, educational, scientific, cultural institutions, in mass-media, in the fields of communications and information, and in the public life of Ukraine as a whole[18].

The most important tasks of the state language policy in Ukraine include: a) promoting the comprehensive development of the individual, including in terms of ensuring her/her mobility, guaranteeing the right for a free choice of language as a means of communication, the formation of a social space as a multilingual one; b) formation of linguistic diversity in terms of recognition of the linguistic rights of representatives of all nations, nationalities and national minorities living in a certain territory; meeting their linguistic needs; c) proclamation at the regional and local levels of the list of languages recognized in Ukraine as regional or minority ones (minority languages); d) clarification of the peculiarities of the realization of the right of Ukrainian citizens to freely determine and apply their mother tongue, lullaby language, family language, language of instruction, language of communication with the simultaneous use of the Ukrainian language as the state language; e) formation of intercultural tolerance, formation of a multicultural balance in the context of formation of Ukrainian society as a multicultural one, of prospects of its integration into the European and world socio-cultural and educational space.

The state language policy is characterized by a number of provisions, the most important of which are enshrined in the Constitution of Ukraine, the laws of Ukraine «On Ensuring the Functioning of the Ukrainian

[18] Рішення Конституційного Суду України (справа про застосування української мови) № 10-рп/99 від 14.12.1999 р. // URL: zakon.rada.gov.ua/laws/show/ v010p 710-99

Language as the State One»[19], «On Ratification of the European Charter for Regional or Minority Languages»[20], a decision of the Constitutional Court of Ukraine (case concerning the use of the Ukrainian language) dated 14.12.1999, #10-rp/99[21], the Council of Europe Framework Convention for the Protection of National Minorities (as regards languages of national minorities) of 1 February 1995[22], the Hague Recommendations on the Rights on National Minorities for Education adopted under the aegis of the OSCE in October 1996[23], the European Charter for Regional or Minority Languages[24], the International Covenant on Economic, Social and Cultural Rights[25], the European Social Charter[26], the International Covenant on Civil and Political Rights[27], etc. The Concept of State Language Policy, adopted by the Decree of the President of Ukraine, defines the strategic priorities of the formation of the national language space in all spheres of life of the Ukrainian society, the full functioning of the Ukrainian language as a guarantee of preservation of the identity of the Ukrainian nation and of consolidation of society[28]. In this case, legal and regulatory provisions of domestic legislation and norms of international law proceed from the fact that: a) Ukraine has formed as a democratic, legal, social state, the borders of which are recognized by the international community; b) the name of the Ukrainian state is determined by the titular ethnos – the Ukrainians, which was formed historically, struggling for many centuries for its own statehood and independence; c) the Ukrainian ethnos forms an absolute majority of the population of the country; it has traditions, customs, rites, culture and language existing for centuries; d) the status of the Ukrainian language as

[19] Про забезпечення функціонування української мови як державної. Закон України № 2704-YIII від 25 квітня 2019 р. // Голос України. 2019. 16 травня.

[20] Про ратифікацію Європейської хартії регіональних мов або мов меншин. Закон України № 802-IY від 15.05.2003 р. // URL: zakon.rada.gov.ua/laws/show/802-15

[21] Рішення Конституційного Суду України (справа про застосування української мови) № 10-рп/99 від 14.12.1999 р. // URL: zakon.rada.gov.ua/laws/show/ v010p 710-99

[22] Рамкова Конвенція Ради Європи про захист національних меншин в частині мов національних меншин від 1 лютого 1995 р. // URL: zakon.rada.gov.ua/laws/show/995_055

[23] Гаазькі рекомендації щодо прав національних меншин на освіту, прийнятих під егідою ОБСЄ у жовтні 1996 р. // URL: https://www.osce. org/uk/hcnm/32194?download=true

[24] Європейська хартія регіональних мов або мов меншин // URL: zakon0.rada.gov.ua/laws/show/994_014

[25] Міжнародний пакт про економічні, соціальні і культурні права // URL: zakon0. rada.gov.ua/laws/show/995_042

[26] Європейська соціальна хартія // URL: zakon0.rada.gov.ua/laws/show/994_062

[27] Міжнародний пакт про громадянські і політичні права // URL: zakon0. rada.gov.ua/laws/show/995_043

[28] Про концепцію державної мовної політики. Указ Президента України від 15 лютого 2010 р. // URL: https://zakon.rada.gov.ua/laws/show/161/ 2010/stru

the state one is legislatively defined, which means its free functioning in all spheres of public life, in information space, public administration, etc. as well as allows to consider the Ukrainian language as a social and legal phenomenon which, having a number of organically inherent functions, is directed at the formation of a person as a national-linguistic personality, the consolidation of the Ukrainian nation as a titular one, the formation of a rule-of-law state and civil society[29].

Regulatory provisions of the Laws of Ukraine «On Education,» «On Preschool Education,» «On Extracurricular Education,» «On General Secondary Education,» «On Higher Education,» «On Culture,» «On Cinematography,» «On Information,» «On Television and Radio Broadcasting,» «On Information Agencies,» «On the Procedure for Covering the Activities of Public Authorities and Local Authorities in Ukraine by the Mass Media,» «On National Minorities in Ukraine,» etc, determine the peculiarities of the use of languages in the priority areas of social relations.

The official interpretation of the provisions of Article 10 of the Constitution of Ukraine on the use of the state language by state authorities and local self-government bodies and its use in the educational process at educational institutions of Ukraine[30] given by the constitutional court of Ukraine states that Ukrainian as the state language is a compulsory means of communication throughout the territory of Ukraine in the exercise of powers by public authorities and local self-government bodies (the language of normative acts, record keeping, documentation, etc), as well as in other public spheres of life activities, which are determined by law. At the same time, the Constitutional Court of Ukraine noted that the language of instruction at pre-school, general secondary, vocational and higher state and communal educational institutions of Ukraine is the Ukrainian language.

According to clause 5 of the Law of Ukraine «On Ratification of the European Charter for Regional or Minority Languages»[31], the application of the provisions of the European Charter for Regional or Minority Languages, measures aimed at the adoption of the Ukrainian language as the state language, its development and functioning in all spheres of

[29] Про забезпечення функціонування української мови як державної. Закон України № 2704-YIII від 25 квітня 2019 р. // Голос України. 2019. 16 травня.

[30] Рішення Конституційного Суду України (справа про застосування української мови) № 10-рп/99 від 14.12.1999 р. // URL: zakon.rada.gov.ua/laws/show/ v010p 710-99

[31] Про ратифікацію Європейської хартії регіональних мов або мов меншин. Закон України № 802-IY від 15.05.2003 р. // URL: zakon.rada.gov.ua/laws/show/802-15

public life in the whole territory of Ukraine should not be considered as hindering or threatening the preservation or development of a language.

The Fundamental Law, stating that the Ukrainian language is the state language of Ukraine (Article 10), declares only general provisions; it does not specify specifics, requirements or peculiarities of the practical use of the Ukrainian language as the state language in Ukraine, of minority languages (languages of national minorities) as means to meet the humanitarian and cultural needs of persons belonging to national minorities. The above-mentioned circumstance made it necessary, as is known, for the domestic legislator to turn to the legal and regulatory support of the practice of functioning of languages in Ukraine; as a result, the law of Ukraine «On Ensuring the Functioning of the Ukrainian Language as the State One» has recently been adopted[32].

The aforementioned norms of domestic and international law are decisive in the development and implementation of the state language policy in Ukraine.

4. International Experience in the Implementation of State Language Policy

The question of the use, functioning and protection of languages is regulated by a number of international legal documents, which define fundamental ideas, principles and provisions for the implementation of language policy. Thus, for example, one of the fundamental principles directly related to the protection of human rights to the freedom of choice of the language of communication is the principle of the prohibition of discrimination on the basis of language, the legal and regulatory requirements of which are reflected in the well-known international legal acts: the European Social Charter[33], The International Covenant on Economic, Social and Cultural Rights[34], the International Covenant on Civil and Political Rights[35], the Convention for the Protection of Human

[32] Про забезпечення функціонування української мови як державної. Закон України № 2704-YIII від 25 квітня 2019 р. // Голос України. 2019. 16 травня.

[33] Європейська хартія регіональних мов або мов меншин // URL: zakon0.rada.gov.ua/laws/show/994_014

[34] Міжнародний пакт про економічні, соціальні і культурні права // URL: zakon0. rada.gov.ua/laws/show/995_042

[35] Міжнародний пакт про громадянські і політичні права // URL: zakon0. rada.gov.ua/laws/show/995_043

Rights and Fundamental Freedoms[36], etc. Ukraine has ratified all the above-mentioned treaties.

The European practice of implementing language policy is to provide constitutional and legal safeguards to protect languages of the titular nations as official ones, which finds its implementation, in particular, in the norms about compulsory knowledge of it and fluency in it of civil servants, the conclusion of intergovernmental agreements in it, its use in the educational and information space as well as in creating the proper conditions for the comprehensive development of regional languages and languages of national minorities in accordance with the obligations of Ukraine regarding the European Charter for Regional and Minority Languages.

The European Charter for Regional or Minority Languages defines a «regional or minority language» as one that is traditionally used within a certain territory of a state as a geographical area, where such a language is a means of communication of a certain number of persons, which justifies the implementation of various protective and incentive measures aimed at its (language) preservation and development[37].

The aforementioned document does not link the recognition of a language a regional one with a certain percentage of minority representatives in the general population of the respective administrative-territorial unit, nor does it foresee the adoption of special decisions by local government bodies (united territorial communities) on the definition of territories for the use of regional languages. At the same time, regional or minority languages include languages, some of which are threatened with extinction, which provides, in accordance with the Charter, for the implementation of appropriate safeguard and incentive measures.

An important issue of linguistic policy is the definition of the status and procedure for the use of minority languages. At the international level, this issue is regulated, first of all, by the European Charter for Regional or Minority Languages[38]. The provisions of the Charter, which was ratified by Ukraine in 2003, determine the procedure for the use of regional and minority languages in the spheres of education and culture,

[36] Конвенція про захист прав людини і основоположних свобод // URL: zakon0.rada.gov.ua/laws/show/995_004

[37] Європейська хартія регіональних мов або мов меншин // URL: zakon0.rada.gov.ua/laws/show/994_014

[38] Європейська хартія регіональних мов або мов меншин // URL: zakon0.rada.gov.ua/laws/show/994_014

in economic and social life, in the work of administrative bodies, the media, in the process of administration of justice, etc.

It is significant that, in the constitutional orders of most European countries, one official language is declared (Denmark, France, Austria, the Netherlands, etc). At the same time, legal norms are established on the inadmissibility of discrimination on the basis of language, the development of the official language and languages of national minorities is encouraged in accordance with the requirements of the legal equality of citizens as a defining principle of the state language policy.

In member states of the European Union, there is also, as is known, a constitutional practice of recognition several languages as the official ones, which is usually related to the historical conditions of the formation and development of the statehood of certain countries.

For example, in Belgium, the constitution provides for the freedom to apply French, Dutch and German languages, without imposing any of them as official. Instead, article 4 of the Belgian Constitution defines the legal principles of the existence of four linguistic regions: the Dutch-speaking one, the French-speaking one, the German-speaking one and the bilingual Brussels Capital Region[39].

A peculiar example of the recognition of official bilingualism is the Constitution of the Irish Republic, Article 8 of which recognizes Irish as the first official language, while English is the second official one.

In the Republic of Ireland, a multifunctional state body was established that coordinates, directs and controls the implementation of the language law, has a number of powers to advise government bodies and citizens on linguistic rights and responsibilities as well as on safeguards for their implementation[40].

Interesting is the linguistic experience of the Swiss Confederation, which, without being a member of the European Union, is closely integrated into the European market economy system, is a member of the Schengen zone. According to Articles 4, 18, 31, 33, 70 of the constitution of the above-mentioned state, the national languages are German, French, Italian and Rhaetian. Each canton has the right to choose one or more national languages. The administration, the police, courts and public

[39] Конституция Бельгии // URL: https://worldconstitutions.ru/?p=157

[40] Конституция Ирландии // URL: http://lib.rada.gov.ua/LibRada/static/LIBRARY/catalog/law/irland_constitut.html

schools use the aforementioned languages, and in addressing the federal government, one can use any national language[41].

The experience of the Baltic States is also significant for Ukraine. In those states, the process of the establishment of the national languages as the state ones was promoted by relevant legislative requirements, which include, inter alia: a) language requirements for employment, certification of civil servants with the obligatory issue of the corresponding language certificate concerning the knowledge of the state language; b) formation of independent attestation commissions to determine the level of fluency of officials in the state language; c) the creation of a special body on linguistic issues, whose powers include training, raising the competence of civil servants and candidates for public office; d) development of qualification requirements, projects of educational programs for the study of the state language, etc. The functioning of the government bodies for monitoring the linguistic situation, the implementation of the legal and regulatory requirements for languages is also provided for by the state language policy of Latvia[42], Lithuania[43] and Estonia[44].

Considerable attention was also paid to the questions of the development and implementation of short-term transitional educational programs, which, on the one hand, significantly intensified the processes of studying the state language, had a decisive influence on the establishment of statehood, and, on the other hand, led to some exacerbation of interethnic relations between the titular ethnos and national minorities, was accompanied by lasting emotional reaction of public opinion to recent legislative proposals concerning the questions of the settlement of the language issue.

In general, member states of the European Union tend to have constitutional requirements for the prevention of discrimination on the basis of language, the desire to preserve linguistic diversity through the development of the state language and languages of national minorities up to granting the status of the official language to two or even more languages. An established norm stipulates that the right of peoples to preserve their mother tongue, to study it is a prerequisite for taking into account the interests of autochthonous linguistic communities, for

[41] Конституция Швейцарской Конфедерации // URL: http://www. ditext.com/swiss/constitution.html

[42] Конституция Латвийской Республики // URL: http://www.pravo. lv/likumi/01_klr.html

[43] Конституция Литовской Республики // URL: https://www.wipo.int/edocs/lexdocs/laws/ru/lt/lt045ru.pdf

[44] Конституция Эстонской Республики // URL: http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/estonia/estoni-r.htm

promoting mutual understanding, ensuring the multicultural state of the European community, its tolerance and social stability.

5. Legal and Regulatory Principles of Ensuring Functioning of the Ukrainian Language as the State One

The innovative potential of the law «On the Functioning of the Ukrainian Language as the State One» that has recently been adopted by the Verkhovna Rada of Ukraine consists, first of all, in developing a legal mechanism for ensuring the functioning of the Ukrainian language as the state one by finding a fair balance between the nation-building potential of the titular nation and the protection of the language rights of minorities. This, on the one hand, allows to improve the legal and organizational principles of the use of the state language, its functioning and protection in Ukraine, and, on the other hand, to promote the free development of other languages – regional or minority languages in accordance with the provisions of the Constitution of Ukraine, the European Charter for Regional Languages or Minority Languages as well as the Council of Europe Framework Convention for the Protection of National Minorities.

The legal mechanism developed by the legislators includes, in particular:

– implementation of a balanced policy in the language sphere concerning the implementation of the constitutional guarantees of preserving the state language as an instrument of unity of society, the provisions of Conclusion[45] and Recommendation[46] of the European Commission for Democracy through Law, Recommendation of the European Parliament and the Council of the European Union[47] in regard to finding more acceptable ways of confirming the supremacy of the Ukrainian language as the only state one and strengthening its role in the Ukrainian society, strengthening its state-building and consolidation functions, enhancing its role in ensuring the territorial integrity and national security of Ukraine;

[45] Венеціанська комісія оприлюднила висновок щодо українського закону про освіту // URL: https://www.dw.com/uk//a-41749149

[46] Венеціанська комісія офіційно опублікувала рекомендації Україні щодо закону про освіту //URL: https://www.unian.ua/politics/2292364-venetsianska-komisiya-ofitsiyno-opublikuvala-rekomendatsiji-ukrajini-schodo-zakonu-pro-osvitu.html

[47] Рекомендації 2006/962/ЄС Європейського парламенту та Ради (ЄС) “Про основні компетенції для навчання протягом усього життя” від 18 грудня 2006 р. // URL: https://zakon.rada.gov.ua/laws/show/994_975

– the use of the Ukrainian language as the state language, of the languages of national minorities in the main spheres of life of Ukrainian society, in the work of state authorities, local authorities, in legal proceedings, economic and social activities, education, science, etc. The state status of the Ukrainian language is determined by the self-determination of the Ukrainian nation; it is an inalienable element of the constitutional system of Ukraine as a unitary state; it implies the mandatory use of it throughout the territory of Ukraine. At the same time, the Ukrainian language as the state one does not apply to the sphere of private communication and of undertaking religious rites[48];

– definition of the rights and obligations of authorities, officials in the territory of Ukraine regarding the use of the Ukrainian language as the state one as well as of regional languages, languages of national minorities in terms of ensuring the legal rights and interests of every citizen of Ukraine regarding the use of the Ukrainian language as the state one and languages of national minorities as a means of meeting humanitarian and cultural needs[49];

– implementation of the State Program for Assisting Ukrainian Language Acquisition through establishing and ensuring the activities of the system of institutions of pre-school, complete secondary, out-of-school, professional (vocational), professional advanced, higher education, adult education, of a network of state, communal courses for the study of the state language, of non-formal and informal education as well as through the development of subjects of educational activity[50];

– guaranteeing the right of individuals belonging to indigenous peoples, national minorities to study the language of the respective indigenous people or national minority of Ukraine at communal institutions of preschool or primary, general secondary education or through national cultural societies[51];

– legal and regulatory support of the activity of bodies of state power in relation to presentation of qualification requirements to officials concerning the level of command of the state language, support and

[48] Про забезпечення функціонування української мови як державної. Закон України № 2704-YIII від 25 квітня 2019 р. // Голос України. 2019. 16 травня.

[49] Про забезпечення функціонування української мови як державної. Закон України № 2704-YIII від 25 квітня 2019 р. // Голос України. 2019. 16 травня.

[50] Про забезпечення функціонування української мови як державної. Закон України № 2704-YIII від 25 квітня 2019 р. // Голос України. 2019. 16 травня.

[51] Про забезпечення функціонування української мови як державної. Закон України № 2704-YIII від 25 квітня 2019 р. // Голос України. 2019. 16 травня.

protection of the Ukrainian language and languages of indigenous peoples, national minorities in Ukraine, promotion of their development. To this end, the law provides for the establishment of a National Commission on the Standards of the State Language, which will approve the standards of the language, check the level of its command when acquiring citizenship or occupying government positions as well as develop requirements for language proficiency, standards for certification of language proficiency with levels (from A1 to C2), etc.[52];

– establishment of tolerance principles of the life activities of Ukrainian society, normalization of possible conflict situations with regard to protection of the rights of Ukrainian citizens to free choice and use of the language regardless of ethnic origin, national-cultural identity, place of residence, religious beliefs, etc;

– legal and regulatory assistance to the preservation of territorial integrity, unity and national security of Ukraine, to the development of cultural relations between different language groups of Ukraine;

– creation of appropriate conditions, forms and means of teaching and learning Ukrainian, regional and minority languages;

– education of respectful attitudes to the dignity of man, his rights and freedoms, language and culture, national traditions.

Language self-determination is guaranteed by the right for protection at the relevant state bodies and at court of rights and legitimate interests of a person and citizen, for appeal at court against decisions, actions or inactivity of state authorities and local self-government bodies, their officials and workers, legal entities and individuals. At the same time, measures to protect languages of national minorities of Ukraine should not narrow the scope of the use of the state language or reduce the need for its study.

CONCLUSIONS

1. State language policy can be defined as a set of measures of state authorities and local self-government bodies (united territorial communities) concerning articulation of linguistic interests of different groups of society, their advocacy and implementation by preserving or changing social conditions, norms of language functioning, as well as prevention of language conflicts in the country.

[52] Про забезпечення функціонування української мови як державної. Закон України № 2704-YIII від 25 квітня 2019 р. // Голос України. 2019. 16 травня.

The state language policy in Ukraine is based on polylinguistic principles in accordance with the principles set forth in the United Nations International Covenant on Civil and Political Rights, the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, and the Framework Convention for the Protection of National Minorities.

The implementation of the state language policy is subordinated to the tasks of establishing harmonious social relations in the sphere of the use of languages in Ukraine by meeting linguistic, cultural, educational, informational needs, observing human and civil rights and freedoms in Ukraine. The state contributes to the development of multilingualism, the study of languages of international communication, especially those that are the official languages of the United Nations, the Council of Europe, UNESCO and other international organizations.

2. The law «On Ensuring the Functioning of the Ukrainian Language as the State One» recently adopted by the Verkhovna Rada of Ukraine contributes to improving the legal and regulatory framework of the national language space on the basis of polylinguism – the free functioning of the entire diversity of languages in Ukraine in accordance with their status – state, regional or minority. The legal and regulatory regulation of the domestic language space, of the main spheres of life activities of Ukrainian society in accordance with its basic functions – adaptation, integration, goal attaining and reproduction of the structure – allows to avoid opposition, and especially the opposition to the mentality of the nation, its outlook of individual components of everyday consciousness, including those formed under the influence of external informational propaganda influences, hybrid wars, annexation of the territory, etc. The free development, use and protection of all the diversity, wealth of languages that have historically developed in Ukraine and are traditionally used contributes to the formation of a polylinguistic state of Ukrainian society. Polylinguistic language culture is the underlying foundation for the formation of the spiritual atmosphere of Ukrainian society, harmony and understanding, the consolidation of society, its establishment as a single social organism.

Status-forming features of Ukrainian as a state language are represented by its consideration as: a) the titular language of the Ukrainian nation; b) a factor of the national identity and state self-determination of the people of Ukraine; c) an inseparable element of the constitutional

system of Ukraine as a unitary state and of the national security of Ukraine.

In the constitutional and legal sense, the terms «state language» and «official language» have the same content, status and functions.

3. The European Charter for Regional or Minority Languages does not use the term «state language» at all. Instead, the notion of «official language» is used in the sense that corresponds to the language of the ethnic group, which gave the name to the state. Accordingly, it seems expedient to consider the term «state language» to correspond to the notion «official language» commonly accepted in European and international law. The aforesaid is identified on several grounds: a) the bearer of the language – the titular nation that establishes, forms and consolidates the state of the Ukrainian people; b) the natural right of the ethnic group as native speaker for the special status of the Ukrainian language; c) the state of the Ukrainian people as an embodiment of the state-building intentions of the Ukrainian nation, of its centuries-old desire to assert its own statehood; d) the initial factor of the state-building process, which is enshrined in the Fundamental Law as the doctrinal position of state-building; e) legal identification of Ukraine as a state with the titular Ukrainian nation.

The fixation by the Constitution of Ukraine of the state status of the Ukrainian language confirms this requirement as the defining principle norm, which, on the one hand, determines the essential principles of the Ukrainian state-building, the existence of the people, and on the other hand, needs additional protection. This is manifested in a special status of the Ukrainian language (de facto) and the constitutionally enshrined procedure for ensuring functioning and protection, making changes (de jure).

4. The constitutional requirement for the functioning of the Ukrainian language in all spheres of public life determines its specific status – to serve the Ukrainian state as a unified means of linguistic communication. This circumstance is at the same time a sign and criterion for the identification of the Ukrainian state with the titular ethnic group – the Ukrainian nation.

5. In regard to the development of cultural relations between different language groups as well as the promotion of consolidation of Ukrainian society, the protection of the rights of citizens to free choice and use of the language regardless of ethnic origin, national and cultural identity, place of residence, religious beliefs, etc, becomes of paramount importance. Consolidation potential is also seen in overcoming linguistic

discrimination, social and legal safeguards to avoid establishing any privileges or restrictions of human rights on the basis of communication in a minority language.

6. Mother tongue cannot be considered a regional or minority language, as it is identified by each individual person on the basis of his/her command of it as a child, or, alternatively, of subjective perception of the language of communication as native. Similarly, communication in the «family language», «lullaby language», etc, is a private affair of every citizen since those languages cannot be considered regional or minority languages.

The lullaby and family language, the native language, the language of private communication in accordance with the constitutional status of the Ukrainian language as the state one should be considered as an integral, guaranteed by the state personal right of a citizen of Ukraine to communicate in accordance with the environment of stay – public or private.

Every citizen of Ukraine has the right to communicate freely in any language (state, regional, minority language, lullaby, family, native one, etc) regardless of ethnic origin, national-cultural identity, place of residence, etc.

7. The European Charter for Regional or Minority Languages uses the term «minority languages», the sense of which is broader than, say, «regional languages» or «languages of national minorities», since under certain conditions at the level of a separate territory (region), protection may be needed by the Ukrainian language. The mentioned document does not foresee the use in the legal space of one state of the terms «state language» and «official language» at the same time, considering them as phenomena of the same linguistic status. This explains to a certain extent the situation regarding the absence of the term «state language» in the legal documents of the Member States of the European Union, and in the Ukrainian legislation – of the term «official language».

8. The meaningful and functional characteristics of the Ukrainian language as the state one, its status, the completeness of constitutional and legal regulation allow also to consider the Ukrainian language as a language of interethnic communication both in Ukraine and in the world, where millions of ethnic Ukrainians live in compact groups – in the

Russian Federation, member states of the European Union, the United States of America, Canada, Asia and Australia, etc[53].

9. The main tendencies of the legal regulation of the state language policy in Ukraine are: a) the legislator's desire to reach consensus, a public compromise between the establishment of the Ukrainian language as the state one, on the one hand, and regional and minority languages, on the other hand; b) recognition of the right of every person belonging to a national minority to study the language of this minority; c) efforts to ensure the language differentiation of the education system; d) the desire to maintain the dynamic balance of interethnic relations, prevent ethnic conflicts, strengthen statehood, democracy, and ensure the socio-political unity of Ukrainian society; e) preservation of interethnic peace and tolerance, application of flexible, regionally differentiated approaches; e) awareness of the challenges of globalization in terms of the formation of a multicultural society in Ukraine. These tendencies confirm the well-known thesis: modern state-building processes are impossible beyond further regulatory and legal strengthening the constitutional status of the Ukrainian language as the state one.

SUMMARY

The essence, the basic principles and tasks of the state language policy in Ukraine, the tendencies of its legal and regulatory support and development are substantiated. Based on the national traditions of state formation, on European experience, the main ways of harmonizing linguistic relations by means of legal and regulatory support of the status of the Ukrainian language as the state one, on the one hand, and of regional and minority languages, on the other hand, in accordance with the established provisions of the polylinguistic language model are considered. Emphasis is laid on the consolidation potential of the Ukrainian language as the state one, on the possibilities of its realization as a means and resource of social changes, the determining factor and the main feature of the identity of the Ukrainian nation, on the maintenance of territorial integrity and national security, unity of society, on the formation of a positive language image of Ukraine in the European and world political and legal space.

[53] Українська правова думка в діаспорі // Мала енциклопедія етнодержавознавства / НАН України. Ін-т держави і права ім. В.М. Корецького; Редкол.: Ю.І. Римаренко (відп. ред.) та ін. – К.: Довіра: Генеза, 1996. – 942 с.

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THE DIRECTIONS OF IMPROVEMENT OF NATIONAL LEGISLATION: FROM THE COMMAND-CONTROLLED SYSTEM TO THE MODERN DEMOCRATIC SOCIAL LAW-GOVERNED STATE

Petkov S. V.

INTRODUCTION

After proclaiming independence in Ukraine[1] the period of large-scale reforms began, which was supposed to be completed by the transformation of the Soviet-pattern Ukraine into the European state. Having adopted the Constitution of Ukraine in 1996, the reformative efforts to introduce human centered ideology gained an additional impulse. Article 5 of the Constitution of Ukraine stipulates that "the bearer of sovereignty and the only source of power in Ukraine is the people. People exercise power directly and through the bodies of state power and local self-government", and Article 6 of the Constitution of Ukraine stipulates that "state power in Ukraine is exercised on the basis of its division into legislative, executive and judicial"[2]. Just in order to bring the state power in Ukraine in the compliance of its actual state (with the remained elements of the Soviet system) with the legal state (enshrined in the Constitution of an independent Ukraine), the administrative reform was initiated in 1998. In fact, it should have become the basis for reforming not only administrative legislation, but also the entire public law in Ukraine.

The Constitution of Ukraine laid the basis for the development of Ukraine as a highly developed, legal, civilized European state with a high standard of living, culture and democracy, in which the principle of the supremacy of law acts and all public relations are based on legal orders. Article 3 of the Constitution of Ukraine stipulates that "human rights and freedoms and their guarantees determine the content and orientation of the state. The state is responsible to a person for its activity. The assertion and

[1] Про проголошення незалежності України : Постанова Верховної Ради Української РСР [Електронний ресурс]. – Режим доступу: http://gska2.rada.gov.ua/.

[2] Конституція України // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

guarantee of human rights and freedoms is the main duty of the state"[3]. The basis of democratic development is the person's responsibility towards society, and the state towards citizens.

So, is it a true state in our country if we talk about an average citizen? If during the collapse of the Soviet Union in the early 1990s, Ukraine claimed to be a country in the top ten of the most developed countries in the world, and now the irresponsible national and foreign policy carried out by the authorities led to a decline in the economic development, an increase in the amount of external debt, and the impoverishment of the population. Corruption in the state apparatus has led to the loss of territories, the emergence of armed conflicts, and state property theft. The genocide has begun against Ukrainian people, who in accordance with Article 5 of the Constitution of Ukraine are "the bearer of sovereignty and the only source of power". In 1993, the population of Ukraine made 52.2 million people, now it is 42.8 million people. If in 2014 the number of births made 314 255, then in 2015 it was 273 884 newborns. Thousands of Ukrainians go abroad in search of a better life outside of the Motherland.

1. Systematization and Codification of Ukrainian Legislation is the Basis for Democratic Changes

We can no longer ignore the actual state of things. And this state is characterized by the negation of elementary axioms of the law theory. We are currently in a state of collapse and disintegration characterized by such terms as "legal nihilism of citizens", "irresponsibility of officials", "insignificance of legal norms", "helplessness of civil society", etc.

The structuring of legislation is a guarantee of its implementation effectiveness. The division into legislation branches and sub-branches, the internal structure of norms must be clear, transparent and unified, regardless of the legal relations regulated by it, so, it must be algorithmic. During the formation and operation of mono-structural Soviet legislation (without division into the legislation of public and private law) there was a chaotic accumulation of laws and by-laws, which created a situation in Ukraine when ordinary citizens, entrepreneurs could not work in accordance with the current legislation due to the complexity and non-transparency of the state regulation. Finally, legislation and the

[3] Там само.

bureaucracy hamper the development of the state. As a result, legislation and bureaucratic apparatus hinder the development of the state.

Traditionally, the main criterion for the unification of administrative and legal norms and their distribution in structural units is the subject of legal regulation[4]. According to this, the system constructed provides for separation of legal institutions, united into the general, special and specific parts of administrative law. The general part of administrative law includes norms (including legal principles) that are in force in all fields of organization and functioning of public administration. So, it unites the most typical, general things in the legal regulation of the filed mentioned. A special part of administrative law is the norms governing the provision of administrative public order. A special part of administrative law is an administrative delinctology.

At present the system of administrative law can be represented as follows.

The general part of administrative law – the essence of administrative law defines: the conceptual framework; object of administrative law; administrative-legal relations; principles of state administration; legal status of administrative law subjects; social agreement; administrative-legal method; forms and functions; administrative law norms[5].

The special part of administrative law – the administrative activity defines: administrative-legal regimes (public emergency, state of martial law, customs, etc.); administrative services; state service; disciplinary responsibility; protection of the rights of citizens; administrative enforcement; administrative proceedings.

Special part of administrative law – administrative delictology defines: administrative responsibility; administrative misconduct; counteraction to misconduct committed by officials; composition of administrative misconduct; proceedings in cases of administrative misconduct; the status of a public servant; system of supervisory bodies.

In Ukraine the issues of administrative reform went beyond the theoretical work long time ago and gained practical – political, scientific, and social – relevance. After the proclamation of Ukrainian independence, there was a period of wide-ranging reforms that had already started during

[4] Остапенко О.І. Адміністративне право : : навч. посіб / О.І. Остапенко, З.Р. Кісіль, М.В. Ковалів та ін. − К. : Правова Єдність, 2008. − 536 с.

[5] Васильев А.С. Административное право Украины: (Общая часть) : учеб.пособие / А.С. Васильев . – 2-е изд . – Харків : Одиссей, 2001 . – 287 с.

the Soviet Union existence[6]. Together with adoption of the Constitution of Ukraine in 1996 the reformative efforts gained an additional impulse[7].

The coverage of the administrative law subject under modern conditions requires a detailed analysis of the achievements of the legal science in general. Recognizing the changes in legal science that have taken place and is taking place in recent years, we emphasize that jurisprudence as a science does not perform, as it would be desirable for politicians of the past and present, the role of servants in the state, but vice versa, by means of legal mechanisms, adjusts the activity of the state and directs society development. But unfortunately, in a situation where society and public institutions replace the spirit of law with the letter of law, when distorted morality becomes the basis for criminal activity, the law of a particular country also loses partially its true form and meaning. Formulas and algorithms that are basic in the law theory, regardless of the society structure, where the law exists, are unchanged. Studying the fractal structure of law and introduction of ideas into practical activity are an urgent task of the present.

The systematization of Ukrainian legislation, in fact, is the first step in bringing it to the international standards. Actually, work must be carried out in two directions: the external and internal structuring of legislation.

The external structuring of legislation consists in bringing to the logical construction of the legislation branches and harmonization of the national legislation with the international law.

The first step in such work is systematization of legislation, creation of electronic databases of legal acts in accordance with socio-economic areas[8]. Analysis of normative-legal acts to detect duplication in them, collisions, gaps and, consequently, the cancellation of those acts that do not comply with the provisions of the current legislation.

This task can not be carried out without transferring norms from one normative legal act to another. At the same time, attention should be paid to the fact that there is already a tendency towards the division of public relations into areas and their respective normative – legal regulation.

[6] Про проголошення незалежності України : Постанова Верховної Ради Української РСР [Електронний ресурс]. – Режим доступу: http://gska2.rada.gov.ua/.

[7] Конституція України // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

[8] Коломоєць Т. О. Адміністративне право України. Академічний курс : підруч. / Т. О. Коломоєць. – К. : Юрінком Інтер, 2011. – 576 с.

Already there was a transfer of norms from the Code on Administrative Offences of Ukraine to the Customs Code of Ukraine. But now misconduct is called administrative and customs law violation, while it is about customs misconduct.

Transfer of norms is the transfer of a legal norm or group of legal norms from one normative legal act to another in accordance with the subject of legal regulation. A transfer may take place between normative-legal acts of different levels. The criterion of transfer activity in the law should be the domain of public relations, in which the relevant legal acts carry out regulation (the subject of legal regulation). At present, such transfer is necessary; it will give an opportunity to avoid collisions, duplications and significantly reduce the number of regulatory acts governing the legal relations in various domains of public life.

Similarly, it is necessary to transfer the norms governing responsibility for misconduct contained in the Code on Administrative offences of Ukraine to other current codes:

Customs Code of Ukraine dated March 13, 2012 № 4495-VI // Bulletin of the Verkhovna Rada of Ukraine. – 2012.– № 44-45, № 46-47, № 48. – Art. 552;

Code of Mineral Resources dated July 27, 1994 No. 132/94-BP // Bulletin of the Verkhovna Rada of Ukraine. – 1994. – № 36. – Art. 340;

Land Code of Ukraine dated October 25, 2001 No. 2768-III // Bulletin of the Verkhovna Rada of Ukraine. – 2002. – № 3-4. – Art. 27;

Water Code of Ukraine dated June 06, 1995, No. 213/95-BP // Bulletin of the Verkhovna Rada of Ukraine. – 1995. – № 24. – Art. 189;

Air Code of Ukraine dated May 19, 2011 No. 3393-VI // Bulletin of the Verkhovna Rada of Ukraine. – 2011. – № 48-49. – Art. 536 etc.

The final goal of the transfer is to construct a legislation holistic system with a branch internal structure.

The branch of legislation should strive to the maximum simplification that is the cancellation of normative-legal acts duplicating each other; replacement of several acts regulating similar legal relations with one, general; uniting several legal acts on related legal relations into one. It is reasonable when one communicative code regulates public relations in a certain area. Such structure of the legislation system does not create any contradictions. It is simple, understandable, and consistent with the axioms of the law theory and sociology.

A clear hierarchy of laws and regulations will provide an opportunity to optimize the national legislation system.

Legislation is nothing but formal rules of law. Therefore, the specialists pay very careful attention to the internal structure of legal norms. In the law theory, formed over the past three millennia, at a scientific level, tested by the time and practical work of generations of lawyers, a number of rules have crystallized, as well as presumptions and principles that can be regarded as axioms of law.

The axioms of law are connected with each other and in a certain configuration are formed in the theorems. At the scientific level, their material manifestation is views, concepts, scientific approaches, and scientific schools. In the social sense, they have the form of institutions, regimes, branches of legislation. In the law-regulatory and law-enforcement area, they are manifested in the form of norms, laws, codes and legal systems. The interdependence and mutual influence of these manifestations is undoubted.

The basis of the legal system is, certainly, an idea. The idea of the supremacy of law is the basis of legal understanding, the right to creation and law enforcement. Justice is the key stone of relations in society manifests itself at all levels of social structure, it is genetically perceived by every person at the mental level. And it must manifest itself in all manifestations of law starting from a certain legal norm and up to the whole system of legislation.

The law theory emphasizes the importance of three-element construction of the legal norm (hypothesis, disposition, and sanction), the unity and interaction of their parts. The construction of legal norms must include the mandatory presence of all three elements in one legal act. This approach ensures the logic and completeness of legal regulation, simplifies law enforcement and reduces the degree of overregulation of social relations, since there is no need to “multiply” numerous by-laws.

It should be reminded that the legal norm does not necessarily have to be contained in one (individual) article of the normative-legal act. The hypothesis, and sometimes the disposition may be in one part of the law or by-law, and the sanction – in another, for example, in a separate section “Responsibility in the field of ...” However, in overwhelming majority, the legal norm must be within one normative legal act. And with only a

few exceptions, when there is a necessity to take into account specific legal relations, one can use blanket norms.

This way, the structure of the communication code must include the following parts:

General part (general provisions – terms used, rules of conduct in the socio-economic field);

Special part (substantive norms – misconduct and sanctions for their commitment);

Specific part (peculiarities of proceedings in cases on misconduct in the socio-economic field exactly, regulated by the communicative code).

In a series of monographic studies and handbooks, the authors identify the branches of legislation with branches of law. And on the basis of the normative acts analysis they come to the conclusion about the existence of economic-administrative, financial-administrative and even administrative-land law. In particular, the emergence of financial law was due to constitutional, administrative, private law and economic science.

Financial law regulates relations in the field of financial activity of the state, first of all, activities on accumulation and distribution of funds, constituting the national income of the state. The administrative-legal method is applied to regulate the relations arising here. However, financial law is recognized as an independent branch, since the regulation of the mobilization, distribution and use of funds in the public interest is of great importance and it has some specific features. Thus, when it comes to the distribution of finance – this is financial law; when it is about the work organization of state financial bodies – this is administrative law.

The inevitable European integration of Ukraine predetermines decisive actions within the state to bring the current legislation in compliance with the international standards for the protection of human and citizen rights and freedoms in relations with the state. Increasing the responsibility of public authorities for the efficiency and integrity of providing administrative services is a requirement of modern Ukrainian society, a condition for the statehood maintenance and one of the fundamental principles of the administrative-legal reform initiated by the relevant Concept in 1998.

The result of internal and external structuring should be legislation that meets all the canons of norm-making techniques with minimal use of blank and reference norms. The only algorithm of the “whole” is repeated

in all its “parts”. Thus, the effect of self-regulation of the legal regulation system is achieved as the most objective, apolitical and theoretically verified format. A clear hierarchy of normative acts, the compliance of the Codes not only with the form but also with the content that they include, will contribute to the effective implementation of the principles enshrined in the Constitution of Ukraine.

1. The Concept of Administrative Law Reform is the Basis for Public Law Development in Ukraine

The ideological foundations of the Soviet system of law failed to meet the requirements of the time. A hierarchical approach to constructing administrative law as a branch of law that covers all areas of public life was false. The degeneration of law in the strict management of society through the use of power orders and administrative penalties led to a complete collapse and decline of the country. And today’s reception of Soviet law, manifested in the scientific, educational, law-making and law-enforcement areas, impedes the construction of civilized civil relations.

Among the number of reasons for such conditions is an imperfect legal system in Ukraine, created during the Soviet period of the state existence, that is, the reception of Soviet law, which, at the time of its formation in the early 20s of the 20th century, categorically abandoned civilization achievements in constructing its own legal system. So, Soviet law served the administrative-command system of state administration and fully met the needs of society of that time for 70 years. In the Soviet Union, an attempt was made to invent the “other law”, based on party ideology that was above the law, and the state regulated all areas of public life. In such a totalitarian system, law not only lost its natural integral role as the regulator of public relations, but also turned into an instrument of influence of state power on citizens (to be exact, groups of party functionaries who usurped power and created a hierarchical bureaucratic pyramid). At that time, the average person had a feeling that the state fully met their needs. A person was dissolved in the state, ceasing to be an individual.

Soviet legal scholars rejected the civilization achievements of the philosophy of Roman law, even in the very changed form in which it

existed in Eastern Europe[9]. The division of civil law into public and private one was considered to be mistaken. The law could only be public and responsibility was the response to violation of the rules established. If the violation of law was significant – it led to criminal responsibility, if insignificant – then to administrative one. All other relations between citizens were recognized as civil relations. Such a simplified system led not only to a misunderstanding of law as a system, but to distortion of its essence in the minds of citizens, the appearance in legislation of twisted norms on the responsibility for collecting spikes or for doing karate.

Today, not only the norms and laws adopted in Soviet times, but also the approaches to the law have remained in force. The imperfection of legal norms was, first of all, used by those sectors of society in which power levers were concentrated. Under these circumstances, corruption, "telephone law", "white-collar crime" became an obstacle to all social transformations, and, accordingly, those factors brought to nothing all the innovation changes. The administrative responsibility of ordinary citizens for minor acts in the face of total neglect of law orders by the power representatives and local self-government bodies caused legal nihilism and degradation of society. The absence of clear division of public and private relations, inconsiderate borrowing of legal norms in the imperfect post-Soviet social system led to the lack of a single interpretation of legal norms.

The reception of Soviet law manifests itself in outdated conceptual approaches, mummification and reanimation of insignificant norms, and the use of regressive approaches in education. And all this, multiplied by total corruption, leads to extremely negative consequences in the life of society. At present, "new" ways to revive the norms and approaches to the rule of law in the field of public administration lead to further deepening of the crisis phenomena in society.

What should we do when the Soviet model of the legal system and the legislative system is out of date, and the modern model no longer corresponds to either this outdated or the classic European model, and most essentially – does not meet the current realities of our life? How to get out of the dead end, where branches of law and branches of legislation conflict with each other? What should be done in a situation where the

[9] Підопригора О.А. Римське право : підручник / О.А. Підопригора, Є.О. Харитонов. – К. : Юрінком Інтер, 2007. – С. 103.

branches of power have “atrophied” and “knitted” together and the state tree itself is no longer nourished by the juices of people’s sovereignty, but turns into “twists”, not capable of normal life in accordance with the Constitution, international standards and universal human values? Of course, each specialist may give their own recipes; we will consider the legal aspect of the issue. Law is a cementing, consolidating substance without which the state can not exist.

The main task that both legal science and legislative and executive bodies face is the comprehensive, reasonable and consistent revision of legislation, bringing it to the modern European standards. In our opinion, one should, firstly, adhere to the postulates and the axioms of law, both during norm-making and law enforcement; and, secondly, ensure the maintenance of those achievements of social protection, which were received, including during the Soviet period of the history of the state, based on the legal traditions of Ukrainian people. State and citizen have both rights and obligations to each other. Harmonization of legislation is the first step towards civil society.

The role of the Constitution in the implementation of administrative reform is decisive, since the Constitution of Ukraine itself requires the adoption of a number of new laws on the public power functioning as for bringing it in compliance with the norms of the Basic Law of the effective administrative legislation, development of the administrative justice institute, and development of a new administrative and legal practice by the administrative apparatus, which would put a person as the highest constitutional social value in the state in the center of attention of both executive bodies and the entire mechanism of public administration[10].

The provision of Article 6 of the Constitution on the clear division of three branches of power, namely, legislative, executive and judicial power with a transparent mechanism of constraints and balances must be recognized as the axiom. The role of the executive power branch should be focused on the administration of executive and regulatory activity, which involves, among other things, the removal of unusual function of norm-making. It is about creating new mandatory rules of conduct, which are actively produced by the executive power branch today, sometimes replacing or changing the essence of the current legislation.

[10] Кампо В.М. Деякі проблеми адміністративної реформи в Україні / В.М. Кампо // Державно-правова реформа в Україні : матер. міжнар. наук-практ. конф. – К. : Ін-т законодавства Верховної Ради України, 1997. – С. 218–220.

We emphasize that the branches of power in no way should be crossed with each other, complement each other and influence one another. In fact, they must be a system of counterweights and constraints.

In this system, the people should create (elect) both legislative power (deputies of all levels) and executive power through elections (the heads of local authorities directly and central government authorities through deputies, to whom they delegate powers) and, of course, judicial power (electing by a direct vote of judges for administration of justice within the specified time). In this case, justice as the highest social value, manifested in the old saying "the law is strict, but this is the law", will be understood and acceptable to every member of society.

In Soviet law, the Code on Administrative Offences of Ukraine played the role of the system-forming law. Legal norms regulating relations in various socio-economic domains were contained in various acts, mostly by-laws (regulations, rules, instructions, orders, and even letters or teletype messages).

The immediate beginning of the administrative reform in Ukraine was adoption of the Presidential Decree "On the State Commission for the Conduct of Administrative Reform in Ukraine"[11] dated 02.10.1997 № 1089. The very concept of administrative reform was approved by the Decree of the President of Ukraine dated 22.07.1998 № 810/98[12.] In general, this concept defined the strategy and organizational and legal principles of reforming the system of state administration, the stages of administrative reform implementation. The State Commission has managed to prepare a document that envisages the creation of a more efficient apparatus of state administration, laying the basis for reforming the civil service and administrative-territorial organization of Ukraine.

Administrative reform includes *three important components*:

– Number one is the reform of the system of state administration,

– Number two is the reform of legislation,

– Number three is the reform of administrative law.

To achieve the goal of the administrative reform the following *tasks* were defined during its conduct:

- Formation of the effective organization of executive power at both central and local levels of governance;

[11] Концепція адміністративної реформи в Україні. – К. : ДВПП Міннауки України, 1998. – 62 с.

[12] Про заходи щодо впровадження адміністративної реформи в Україні : Указ Президента України від 22.07.1998 р. № 810/98// Офіційний вісник України. – 1999. – № 21. – С. 32.

- Formation of a modern system of local self-government;
- Introduction of a new ideology of the executive and local self-government functioning as activities to ensure the implementation of rights and freedoms of citizens, the provision of state and public services;
- Organization of civil service and service in local self-government bodies on the new principles; creation of a modern system of training and retraining of administrative personnel;
- Improvement of the administrative-territorial system.

Codification has become one of important parts of the legal reform in Ukraine as a way to systematize legal acts. Adoption of the codified normative acts was carried out by means of processing and compilation of legal norms in logically agreed normative legal acts that govern a certain field of public relations at the branch level systematically and in full:

- 2002 (came into force on 01.01.2004) – The Customs Code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 2002, № 38-39, p. 288); 2012 – a new version of the Customs Code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 2012, № 44-45, № 46-47, № 48, Article 552);
- 2005 – The Code of Administrative Legal Proceedings of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 2005, № 35-36, № 37, Article 446);
- 2011 – The Tax Code of Ukraine (Bulletin of the Verkhovna Rada of Ukraine, 2011, № 13-14, № 15-16, № 17, Article 112)

became the stages of administrative law reform.

In 2010 the wide-scale reformation of the system of executive power bodies was started.[13] First of all, it was proved by the adoption of the Presidential Decrees "On Optimization of the System of Central Executive Power Bodies"[14] on 09.12.2010 № 1085/2010 and "The Issues of the Optimization of the System of Central Executive Power Bodies"[15] dated 06.04.2011 № 370/2011, as well as adoption of the Laws "On

[13] Комзюк А.Т. Напрямки розвитку адміністративного права України в контексті пріоритетного забезпечення прав і свобод людини і громадянина [Електронний ресурс] / А.Т. Комзюк. – Режим доступу: http://www.nbuv.gov.ua/.

[14] Про оптимізацію системи центральних органів виконавчої влади : Указ Президента України від 09.12. 2010 р. № 1085/2010 [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/1085/2010.

[15] Питання оптимізації системи центральних органів виконавчої влади : Указ Президента України від 06.04.2011 р. № 370/2011 [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/370/2011.

Central Executive Power Bodies" on 17.03.2011 № 3166-VI[16], "On the Cabinet of Ministers of Ukraine" on 27.02.2014 № 794-VII[17].

Today we have the Strategy for Sustainable development "Ukraine – 2020" approved by the order of the President of Ukraine on 12.01.2015 № 5/2015[18], defined the reform of state administration, namely, the construction of transparent system of state administration, the creation of state service professional institution, its efficiency provision as a goal of the primary reforms. The result of the reform implementation should be creation of an efficient, transparent, open and flexible state administration structure with the use of the latest information and communication technologies (e-government) capable of producing and implementing a coherent state policy aimed at sustainable social development and adequate response to internal and external challenges.

Today, many things have already been done. The various types of central executive bodies (ministries, state committees and central executive bodies with special status) are classified and regulated, it is determined that the ministry is the supreme body in the system of central executive power bodies. Significant steps were also taken in improving the civil service system, revision of the administrative and territorial structure of the state; measures were taken to strengthen the guarantees of local self-government, and adopted a program of its state support.

The Strategy for Sustainable Development "Ukraine-2020" has given an equal priority to the reform of state administration as well as decentralization of power. Such step should re-structure the relations between the state and society, changing their vector. The autonomy of local self-government and the completeness of power in solving local issues, self-sufficient administrative-territorial units and budget autonomy generate the illusion of such desirable freedom. Freedom from state interference, arbitrariness of officials, exaggerated fiscal policy.

CONCLUSIONS

The large-scale administrative-legal reform conducted within the reasonable terms may finally trigger the mechanism of state

[16] Про центральні органи виконавчої влади : Закон України від 17.03.2011 р. № 3166-VI // Відомості Верховної Ради України (ВВР), 2011, № 38, ст. 385.

[17] Про Кабінет Міністрів України: Закон України від 27 лютого 2014 року № 794-VII // Відомості Верховної Ради України (ВВР), 2014, № 13, ст. 222.

[18] Про Стратегію сталого розвитку «Україна – 2020» : Указ Президента України від 12.01.2015 р. № 5/2015 [Електронний ресурс]. – Режим доступу: http://zakon5.rada.gov.ua/laws/show/5/2015.

administration of a new pattern, namely, the mechanism of administration of democratic law-governed and social state.

It is necessary to go through the following stages:

- To define clearly the subject, methods and the system of administrative law and to clear it up from relations that are unnatural to it;
- To systematize administrative law in accordance with the subject of administrative law defined, releasing it from legal norms of other branches;
- To consolidate the status of self-government administrative bodies by legal norms, taking into account the distribution of powers.

The steps to bring Ukrainian legislation to the world standards should take place in a complex and coordinated manner and avoid creating additional conflicts in the national legal system. The transparency of this process should be ensured by extensive discussions with the public as well as scientific community and popularization of law-making actions of authorities among the people.

The proposed approach should create a theoretical basis for creation of a system of normative-legal acts in the field of responsibility for public misconduct. In accordance with the hierarchy of normative legal acts, the construction of this system should go from the Basic law, covering the basic principles, concepts and stages of proceedings in cases of public misconduct. In the future, laws and by-laws adopted in compliance with the provisions of the Basic law will require technical improvements in compliance with the requirements of norm-making techniques and international standards.

SUMMARY

The article describes the directions of improvement of national legislation in Ukraine. The Constitution of Ukraine laid the basis for the development of Ukraine as a highly developed, legal, civilized European state with a high standard of living, culture and democracy, in which the principle of the supremacy of law acts and all public relations are based on legal orders.

The steps to bring Ukrainian legislation to the world standards should take place in a complex and coordinated manner and avoid creating additional conflicts in the national legal system. The transparency of this process should be ensured by extensive discussions with the public as well

as scientific community and popularization of law-making actions of authorities among the people.

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FORENSIC EXAMINATION ON INTELLECTUAL PROPERTY AS AN INSTITUTE OF PROTECTION OF CRITICAL INFRASTRUCTURE IN UKRAINE: GENESIS, CONCEPT AND SYSTEM

Fedorenko V. L.

INTRODUCTION

The development of modern states implies the effective protection of their rights to intellectual property[1]. After all, these objects today are no less important indicator of the country's economic, social, cultural and spiritual potential than its financial resources or minerals. It is not in vain that the key to the development and prosperity of the intellectually inherent economies of most of the member states of the European Union, the USA, Japan, Singapore, South Korea, and others became the most developed systems of administrative and judicial protection of the right to objects of intellectual property rights in the 21st century.

For Ukraine, the problem of developing and improving an effective system of protection of rights to intellectual property objects is, on the one hand, the issue of preserving and increasing the domestic intellectual capital, a kind of *'intellectual matrix'* of Ukraine's critical infrastructure, and on the other hand a narrative for European integration through the implementation of the provisions of the Agreement on the association of Ukraine with the EU and other international obligations of our state in the field of protection of intellectual property. It should be noted that despite the known shortcomings in the field of law-making and enforcement practice in protecting the rights to intellectual property objects in Ukraine, Ukraine's successes in this area are also prominent and promising. In particular, in the years 2002-2019, the forensic examination on intellectual property has been established and developed. It is not analogous in most countries of the world. In 2019, the Supreme Court on Intellectual Property will begin its work; a number of initiatives supported by the public have been introduced to the Parliament, which should improve the

[1] Fedorenko W. Udział ekspertów sądowych w ochronie praw własności intelektualnej na Ukrainie i za granicą / W. Fedorenko // Nowe wyzwania i rozwiązania w europejskim systemie ochrony praw człowieka. Red. naukowa J. Jaskiernia, K. Sprzyszak. – Toruń: Wydawnictwo Adam Marszałek, 2018. – S. 510-512.

existing legislation on the protection of copyright and related rights, inventions and industrial designs, etc.

1. The concept and genesis of forensic examination of objects of intellectual property rights

The right to intellectual property was first laid down in English by the Statute of Queen Anne (1710). According to it, it was forbidden to print and reprint books without the consent of the authors and set a 14-year term of copyright protection. In 1774, this provision was implemented by the court in the decision on the Donaldson *vs.* Beckett case, which protected the 14-year copyright term of Donaldson[2].

Centuries later, the right to intellectual property was secured in the Constitution of the State of Massachusetts in 1789. Its provisions have regulated that *'there is no property that belongs to a person more than that which is the result of its intellectual work'.* Similar provisions were also found in the constitutions of the former European countries like Denmark, Norway, Prussia, Saxony, and others[3].

The very category of *'intellectual property'* was first introduced in general use in 1850 by Libertarian L. Spooner (1808-1887) only[4]. And the consolidation of the legal regime for the protection of intellectual property at the international level took place several decades later. Thus, in 1883, intellectual property was enshrined in one of the first international treaties in this area in the Paris Convention for the Protection of Industrial Property[5], and in 1886, in the Berne Convention on the Protection of Literary and Artistic Works, which operates today, with the latest changes in 1979[6].

Over time, the provisions of international treaties on the protection of the right to intellectual property, first of all a copyright, were embodied in the end of 19th – at the beginning of the 20th century in the legislation of many European countries. In particular, the Austrian Copyright Act for literary and artistic works and photographs of December 26, 1895 and the

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[2] Бетелл Т. Собственность и процветание : уроки истории / Томм Бетелл ; пер. с англ. Б. Пинскера. – М. ; Челябинск : Социум, 2018. – С. 353.

[3] Охорона інтелектуальної власності в Україні / С.О. Довгий, В.О. Жаров, В.О. Зайчук та ін. – К. : Форум, 2002. – С. 5.

[4] Бетелл Т. Собственность и процветание : уроки истории / Томм Бетелл ; пер. с англ. Б. Пинскера. – М. ; Челябинск : Социум, 2018. – С. 351-353.

[5] Паризька конвенція про охорону промислової власності від 20 березня 1883 року (укр/рос) // Зібрання чинних міжнародних договорів України. – 1990. – № 1. – Ст. 320.

[6] Бернська конвенція про охорону літературних і художніх творів : Конвенція, Міжнародний документ від 24 липня 1971 року // Зібрання чинних міжнародних договорів України. – 2006. – № 5 / Книга 2 /. – Ст. 1247.

Russian Copyright Act of March 20, 1911 were in force in the Ukrainian lands that were at that time part of the Austro-Hungarian and Russian empires[7].

In its comprehensive distribution, the category *'intellectual property',* in the modern sense, was received in the second half of the 20th century only. So, Part 2 of Art. 27 of the Universal Declaration of Human Rights (1948) stated that *'Every person has the right to protect his moral and material interests, which are the result of scientific, literary or artistic works of which he/she is the author'*[8]. That is, the Declaration approved and guaranteed the human right to own and use the results of its intellectual and creative activity as an important component of the *'universal ideal'* of human rights.

Respect for property rights, as one of the fundamental human rights, and scientific and technological progress, helped to recognize and consolidate in the International Covenant on Economic, Social and Cultural Rights (1966) as the human rights of using the results of scientific progress and apply these results in practice, as well as enjoy the protection of moral and material interests arising in connection with any scientific, literary or artistic works to which they are the authors (Art. 15 of the Covenant)[9].

In the following 1967, the Convention on the Establishment of the World Intellectual Property Organization (WIPO) was adopted. The activities of WIPO and individual states of the world (Great Britain, USA, France and Switzerland, *etc.)* contributed to the implementation of the Convention's intellectual property rights protection mechanisms. First of all, copyright law. Thus, in 1971 and 1979, the contracting parties, who were *'inspired by the same desire to protect as effectively and equally as possible the rights of authors, their literary and artistic works,'* were updated by the Bern Convention on the Protection of Literary and Artistic Works[10].

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[7] Prawo własności intelektualnej / Red. naukowa J. Sieńczyło-Chlabicz. Seria Akademicka. – Warszawa: WoltersKluwer, 2015. – S. 34.

[8] Загальна декларація прав людини : прийнята та проголошена резолюцією Генеральної Асамблеї ООН від 10 грудня 1948 року № 217 А (III) // Офіційний вісник України. – 2008. – № 93. – Ст. 3103.

[9] Міжнародний пакт про економічні, соціальні і культурні права від 16 грудня 1966 року : ратифікований Указом Президії Верховної Ради УРСР від 19 грудня 1973 року № 2148-VIII // Международные акты о правах человека. Сборник документов. – М. : НОРМА-ИНФРА-М, 1998. – С. 44-52.

[10] Бернська конвенція про охорону літературних і художніх творів : Конвенція, Міжнародний документ від 24 липня 1971 року // Зібрання чинних міжнародних договорів України. – 2006. – № 5 /Книга 2 /. – Ст. 1247.

International standards in the field of the establishment and protection of intellectual property rights are now embodied in the Constitution and laws of Ukraine. In particular, Part 1 of Art. 41 of the Constitution of Ukraine states: *'Everyone has the right to own, use and dispose of his property, the results of his/her intellectual and creative activity*'[11].

The right of intellectual property, its objects and subjects, the grounds for the emergence, change, termination and renewal, property rights and personal non-proprietary rights to intellectual property objects, the forms of use of these objects, as well as cases of lawful use, without the consent of the author (creator), etc., are regulated by the Civil Code of Ukraine (Art. 433-448 and others), the Laws of Ukraine On Copyright and Related Rights, On the Protection of Rights to Trademarks for Goods and Services, On Protection of Rights to Inventions and Utility Models, On the Protection of Rights to Industrial Designs, and other Acts of the Legislation in force[12] [13] [14] [15] [16].

The norms regulating relations in the field of intellectual property rights, as stated in the Decree of the Plenum of the Supreme Economic Court of Ukraine dated October 17, 2012, No. 12 On Some Issues in the Practice of Resolving Disputes related to the Protection of Intellectual Property Rights were also developed in other laws, for example, the laws of Ukraine *On the Distribution of Copies of Audio-visual Works, Phonograms of Videograms, Computer Programs and Databases, On the Peculiarities of State Regulation of the Activities of Economic Entities associated with Production, Export, Import of Disks for Laser Reading Systems, On the Breeding Business in Livestock, On Scientific and Technical Information, On Protection against Unfair Competition, On State Regulation in the Field of Technology Transfer,* and *On Medicines,*

[11] Конституція України : прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 року // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

[12] Цивільний кодекс України : від 16 січня 2003 року // Відомості Верховної Ради України. – 2003. – № 40. – Ст. 356.

[13] Про авторське право і суміжні права : Закон України від 23 грудня 1993 року // Відомості Верховної Ради України. – 1994. – № 13. – Ст. 64.

[14] Про охорону прав на знаки для товарів і послуг : Закон України від 15 грудня 1993 року // Відомості Верховної Ради України. – 1994. – № 7. – Ст. 36.

[15] Про охорону прав на винаходи і корисні моделі : від 15 грудня 1993 року // Відомості Верховної Ради України. – 1994. – № 7. – Ст. 32.

[16] Про охорону прав на промислові зразки від 15 грудня 1993 року // Відомості Верховної Ради України. – 1994. – № 7. – Ст. 34.

etc.[17] The Ministry of Economic Development and Trade of Ukraine has been working to improve the legislation on the protection of citizens' rights to intellectual property during 2017-2019.

Proceeding from the normative content of the aforementioned acts of the legislation, the right of intellectual property belongs to the persons who are the creators of the object of intellectual property rights (the author, performer and inventor, etc.) and other subjects, which own personal immaterial and/or proprietary intellectual property rights respectively to the provisions of the law.

Approved in the Constitution and laws and international treaties of Ukraine, the right to intellectual property rights is guaranteed and protected by the state and society. At the same time, an institute of forensic examination on intellectual property matters is an important element in the mechanism of judicial protection of this right.

As you know, the implementation of the provisions of the Decree of the President of Ukraine No. 285 dated April 27, 2001 *On Measures to Protect Intellectual Property in Ukraine*, our state has joined a number of international treaties in the field of protection of the right to intellectual property, and has taken measures the establishment in Ukraine of an effective institutional mechanism for the approval and protection of intellectual property rights. In particular, the creation of a patent library in Ukraine and the study of the possibility of creating a specialized patent court,[18] etc.

On the implementation of the said Decree of the President of Ukraine dated April 27, 2001 № 285 by the order of the Ministry of Justice of Ukraine dated January 17, 2002, No. 4/5. List of the main types of forensic examination and expert specialties, which assigns the qualification of a forensic expert to the Research Centre for Forensic Examination on Intellectual Property (RCFEIP) specialists to the Ministry of Justice and workers who do not work at such RCFEIP were supplemented by examination in the field of intellectual property. In the same year, the Central Experts and Qualifications Commission of the Ministry of Justice certified the first forensic experts in the field of

[17] Про деякі питання практики застосування господарськими судами законодавства про захист прав на об'єкти інтелектуальної власності : Оглядовий лист Вищого господарського суду України від 28 лютого 2017 р. № 01-06/ 521 // Електронний ресурс. Режим доступу: https://zakon.rada.gov.ua/laws/show/v_521600-17 – назва з екрану.

[18] Про заходи щодо охорони інтелектуальної власності в Україні: Указ Президента України від 27 квітня 2001 року № 285 // // Офіційний вісник України. – 2001. – № 18. – Ст. 783.

intellectual property. A Section for Forensic Examination of Intellectual Property Objects as a part of the Scientific Advisory and Methodological Council on Forensic Examination (SAMCFE) of the Ministry of Justice was also formed[19]. Thus, the Institute for Forensic Examination on Intellectual Property has been established, since 2002.

An important role in the methodical provision of forensic examination on intellectual on property was played by the generalization of practice by economic courts. Thus, on June 10, 2004, the Supreme Economic Court of Ukraine adopted the Recommendation On Some Issues of the Practice of Resolving Disputes Related to the Protection of Intellectual Property Rights, No. 04-5/1107) and Recommendations On Certain Issues of the Practice of Appointment of Forensic Examinations in Cases Involving Disputes Related to the Protection of Intellectual Property Rights of March 29, 2005, No. 04-5/76[20]. The relevant Recommendations have proven to be effective and have been developed by economic courts in subsequent years[21].

On December 31, 2004, according to the order of the Cabinet of Ministers of Ukraine, No. 984-p, a Research Centre for Forensic Examination on Intellectual Property, as a specialized judicial-expert institution, was created on the proposal of the Ministry of Justice, which was assigned to the management of the Ministry of Justice of Ukraine, which carries out research forensic examination on intellectual property[22]. For more than 14 years of its activities, the RCFEIP has established itself as the main research institute of forensic examination[23]. The development of this type of forensic examination led to its methodological justification, the results of which now have their implementation in 9 methods,

[19] Крайнєв П.П. Судова експертиза з питань інтелектуальної власності / П.П. Крайнєв // Судова експертиза. – 2004. – № 1. – С. 11-12.

[20] Гаврилішин А.П. Захист права інтелектуальної власності господарськими судами України / А.П. Гаврилішин, А.А. Новак // Порівняльно-аналітичне право. – 2013. – № 4. – С. 102.

[21] Про деякі питання практики вирішення спорів, пов'язаних із захистом прав інтелектуальної власності : Постанова Пленуму Вищого господарського суду України : від 17 жовтня 2012 р. № 12 // Вісник господарського судочинства. – 2012. – № 6. – Ст. 57.

[22] Про утворення Науково-дослідного центру судової експертизи з питань інтелектуальної власності : Розпорядження Кабінету Міністрів України від 31 грудня 2004 р. № 984 // Офіційний вісник України. – 2005. – № 1. – Ст. 37.

[23] Федоренко В.Л. Становлення та розвиток Науково-дослідного центру судової експертизи з питань інтелектуальної власності Міністерства юстиції України (2004-2017 рр.) / В.Л. Федоренко // Проблеми теорії та практики судової експертизи з питань інтелектуальної власності : Матер. науково-практ. конф. (21 грудня, 2017 р., м. Київ) ; за заг. ред. проф. В.Л. Федоренка ; Науково-дослідний центру судової експертизи з питань інтелектуальної власності Міністерства юстиції України. – К. : Видавництво Ліра-К, 2017. – С. 8-14.

numerous methodological recommendations, textbooks, monographs and other publications.

Thus, forensic examination on intellectual property is a deliberate activity aimed at obtaining evidence on the protection of the right to intellectual property, the content of which is to be investigated by court experts on the basis of special knowledge in the field of copyright, trademark rights for goods and services, industrial property rights, intellectual property, objects, phenomena and processes, in order to provide objective and well-grounded findings that are or will be subject of legal proceedings.

However, the Research Centres for Forensic Examination on Intellectual Property (*RCFEIP*) activities is not limited to forensic examination of the RCFEIP of the Ministry of Justice, according to Resolution of the Cabinet of Ministers of Ukraine dated July 27, 2011, No. 804 that states the followings: *'At the request of individuals or legal entities conducting expert investigations using means and methods of forensic examination, the results of which are issued as conclusions of expert studies, the provision of consultations requiring special knowledge*[24].

In addition to forensic examinations, protection of objects of intellectual property rights is carried out by conducting expert investigations by certified expert specialists, the results of which are issued as follows: (a) Conclusions of expert studies; an (b) Advisory reports (Conclusions). The latter, taking into account the practice of the RCFEIP activities in 2005-2019, protect the right to intellectual property rights when conducting tender procedures and providing administrative services.

2. Classification of Forensic Examination on Intellectual Property

The category *'classification of forensic examinations on intellectual property'* is derived from the other, generic category as *'classification of forensic examinations',* and is quite studied in legal science and expert studies. In its turn, the basis of knowledge about the classification of forensic examinations is the content of the category *'classification'* (from *'classis'* means *'category'* and *'fixation'*) means *'... the division of objects*

[24] Деякі питання надання платних послуг науково-дослідними установами судових експертиз Міністерства юстиції України : Постанова Кабінету Міністрів України від 27.07.2011 р. № 804 // Офіційний вісник України. – 2011. – № 57. – Ст. 2296.

according to common features from the formation of a system of classes of a given set of objects', or *'... a system of distribution of objects, phenomena or concepts to classes, groups on special features,'* etc [25] [26].

In accordance, *the classification of forensic examinations on intellectual property is purposeful scientific and practical activity on their distribution, on the basis of pre-identified criteria, on certain types (classes) and groups of forensic examination of objects of intellectual property right with the aim of further systematization*.

At the same time, the classification of forensic examinations has not only theoretical and methodological but also practical application, since it allows optimizing forensic expert activity on intellectual property issues, to determine the tendencies of its development, and to identify among them the key areas of development of this type of forensic examination.

The classification of forensic examination on intellectual property is carried out in accordance with certain criteria (from the Greek word 'κριτήριον' is *'a means of judgment'*), which is commonly understood as *'... the features taken as the basis of classification'*[27] appropriate examination. Based on the commonly used criteria for classifications of forensic examinations on intellectual property issues, the current provisions of the current legislation on intellectual property rights and the Regulations on the appointment and conducting of forensic examinations and expert researches and scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert research, approved by the Order of the Ministry of Justice of Ukraine of October 08, 1998, No. 53/5, the Regulations on Expert-Qualification Commissions and Attestation of Forensic Experts, approved by the Order of the Ministry of Justice of Ukraine dated March 3, 2015, No. 301/5 on the List of Types of Forensic Examinations and Expert Specialties[28] [29].

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[25] Словник іншомовних слів / Уклад.: С.М. Морозов, Л.М. Шкарапута. – К. : Наук. думка, 2000. – С. 271.

[26] Український тлумачний словник (тезаурус) 25 000 слів / уклад. і гол. ред. В.Т. Бусел. – К.; Ірпінь: ВТФ «Перун», 2016. – С. 511.

[27] Словник іншомовних слів / Уклад.: С.М. Морозов, Л.М. Шкарапута. – К. : Наук. думка, 2000. – С. 305.

[28] Про затвердження Інструкції про призначення та проведення судових експертиз та експертних досліджень та Науково-методичних рекомендацій з питань підготовки та призначення судових експертиз та експертних досліджень : Наказ Міністерства юстиції України від 08 жовтня 1998 року № 53/5 // Офіційний вісник України. – 1998. – № 46. – Ст. 172.

[29] Про затвердження Положення про експертно-кваліфікаційні комісії та атестацію судових експертів : Наказ Міністерства юстиції України від 03 березня 2015 р. № 301/5 // Офіційний вісник України. – 2015. – № 17. – Ст. 468.

At one time P.P. Krainev substantiated the complex classification of forensic examinations on intellectual property. Taking into account the properties of the objects of intellectual property rights, the scientist proposed to distinguish the followings: (a) objects of industrial property rights (objects of patent law and means of individualization (designation)); (b) objects of copyright and related rights; and (c) other objects of intellectual property rights (commercial secrets, including know-how and termination of unfair competition)[30]. Nowadays, scientists identify the types of relevant examination mainly with expert specialties even in the ground-breaking editions on forensic examination in Ukraine[31].

At the same time, the classification of forensic intellectual property examinations in today's conditions requires a system of criteria that will help to identify all of their diversity and properties, to measure the potential for forensic examination on intellectual property issues. In our opinion, such criteria are the followings: (1) objects of intellectual property rights and their properties; (2) the type of procedural proceedings, within which a forensic examination on intellectual property is conducted; (3) subjects of appointment and order of forensic examination on intellectual property; (4) the grounds and procedure for the appointment of forensic examination on intellectual property; and (5) the subject of the forensic examination on intellectual property, etc.

3. Characteristics of Certain Types of Forensic Examination on Intellectual Property in Ukraine

3.1. Often, the basis of the classification of forensic examination on intellectual property takes into account classification of ***the objects of intellectual property rights themselves***. According to Art. 420 of the Civil Code of Ukraine, the objects of intellectual property law include the followings: (1) literary and artistic works; (2) computer programs; (3) data compilation (database); (3) performance; (4) phonograms, videograms, broadcasts (programs) of broadcasting organizations; 5) scientific discoveries; (6) inventions, utility models, industrial designs; (7) layout

[30] Крайнєв П.П. Судова експертиза у сфері інтелектуальної власності ; за ред. П.П. Крайнєва / П.П. Крайнєв, Н.М. Ковальова, М.В. Мельников. – Вінниця : ПП «Поліграф. Центр «Фенікс»; ДІВП ВАТ «Інфракон» – «Інфракон-І», 2008. – С. 20-26.

[31] Основи судової експертизи : навч. посібн. / автор.-уклад.: Л.М. Головченко, А.І. Лозовий, Е.Б. Сімакова-Єфремян та ін. – Х. : Право, 2016. – С. 409.

(topography) of integrated circuits; (8) innovative proposals; (9) plant varieties, breeds of animals; (10) commercial (firm) name, trademarks (signs for goods and services), geographical indications; and (11) commercial secrets, etc[32].

In the Agreement on the Association between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand of 16 September 2014, which was enacted in September 2017, following its ratification by the Netherlands, in effect, Chapter 9 Intellectual Property in Part 2 defined the standards for the following objects of intellectual property rights: (1) copyright and related rights; (2) computer programs; 3) data compilation (database); (4) phonograms, videograms, broadcasts (programs) of broadcasting organizations, including cable broadcasting; (5) trademarks; (6) geographical indications; (7) industrial designs; (8) inventions (patents); (9) topography of semiconductor products; (10) varieties of plants and breeds of animals; and (11) genetic resources, traditional knowledge and folklore, *etc*[33].

Similar approaches are widespread in many foreign countries. For example, in the Polish textbook Intellectual Property Rights (2015), the following objects are distinguished: (1) copyright and related rights; (2) audio-visual works; (3) the database; (4) computer programs; (5) the image and the addressee of the correspondence; (6) patent law; (7) the right of trademarks; (8) the right of industrial designs; (9) geographical designation; (10) samples of utility products; and (11) topography of chips[34]. Although, it should be noted that among forensic examinations conducted in Poland, in particular, in the Institute for Forensic Examination. Dr., prof. J. Zegn in Krakow (Ministry of Justice), has no legal examination on intellectual property.

To date, it is enshrined in Clause 1.2.5 of the Instruction on the Appointment and Conducting of Forensic Examinations and Expert Researches, approved by the Order of the Ministry of Justice of Ukraine of October 08, 1998, No. 53/5, and in Appendix 6 to the Regulations on

[32] Цивільний кодекс України : від 16 січня 2003 року // Відомості Верховної Ради України. – 2003. – № 40. – Ст. 356.

[33] Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами членами, з іншої сторони від 16 вересня 2014 р. // Офіційний вісник України. – 2014. – № 75 /Т. 1/. – Ст. 2125.

[34] Prawo własności intelektualnej / Red. naukowa J. Sieńczyło-Chlabicz. Seria Akademicka. – Warszawa: WoltersKluwer, 2015. – 607 s.

Expert-Qualification Commissions and Certification of Forensic Experts (Paragraph 3 of Section 5), approved by the Order of the Ministry of Justice of Ukraine dated 03.03.2015 № 301/5, List of Types of Forensic Examinations, upon which the qualification of a judicial expert is assigned to specialists of research institutions of forensic examinations, hereinafter referred to as '*RCFEIP'* of the Ministry of Justice (Table 1), according to which RCFEIP court experts and court experts who are not employees of the RCFEIP, as a whole, reproduce a system of objects of intellectual property rights enshrined in the Civil Code of Ukraine [35] [36]. Actually, the classification of forensic examinations on intellectual property in Table 1 is the most widespread, and in the new Guide for Intellectual Property Judges (2018)[37] is no alternative.

Not all types of expert specialties on intellectual property, from the List above, appeared to be in demand for forensic and research activity. Given that *the Specialty 13.5.1: Plant Variety Investigations* is currently represented in Ukraine by only 1 forensic expert, real experience in carrying out relevant expert researches and has prospects for development, at the autumn meetings of profile Sections of the SAMCFE was decided: to leave both the Specialty 13.5.1 unchanged, and *the Specialty 13.5.2: Animal-related Researches* and the *Specialty 13.7: Researches related to topographies of integrated circuits (chips)* to remove from the List of Types of Forensic Examinations according to which the qualification of a forensic expert is assigned to specialists of research institutions of forensic examinations of the Ministry of Justice without changing the names of other specialties and their numbering, with the possibility of their recovery in real need. The corresponding decision was supported on December 20, 2018 by the Presidium of the SAMCFE under the Ministry of Justice of Ukraine.

[35] Про затвердження Інструкції про призначення та проведення судових експертиз та експертних досліджень та Науково-методичних рекомендацій з питань підготовки та призначення судових експертиз та експертних досліджень : Наказ Міністерства юстиції України від 08 жовтня 1998 року № 53/5 // Офіційний вісник України. – 1998. – № 46. – Ст. 172.

[36] Про затвердження Положення про експертно-кваліфікаційні комісії та атестацію судових експертів : Наказ Міністерства юстиції України від 03 березня 2015 р. № 301/5 // Офіційний вісник України. – 2015. – № 17. – Ст. 468.

[37] Посібник для суддів з інтелектуальної власності / Бендисюк І.М. та ін. – К.: К.І.С., 2018. – С. 370-371.

Table 1

List of Types of Forensic Examinations by which the Qualification of a Forensic Expert is assigned to Specialists of Research Institutions of Forensic Examinations of the Ministry of Justice

Item No.	Types and Subspecies of Forensic Examinations	Indices of Expert Specialties	Types of Expert Specialties
Intellectual Property Examination			
30.1.	Literary and artistic works	13.1.1.	Researches related to literature and works of art and others;
		13.1.2.	Researches related to computer programs and data compilations (databases);
30.2.	Phonograms, videograms, programs (broadcasts) of broadcasting organizations;	13.2.	Researches related to performances, phonograms, videograms, programs (broadcasts) of broadcasting organizations;
30.3.	Inventions and utility models;	13.3.	Research related to inventions and utility models;
30.4.	Industrial samples;	13.4.	Researches related to industrial samples;
30.5.	Varieties of plants and animal breeds;	13.5.1.	Researches related to plant varieties;
		13.5.2.	Researches related to animal breeds;
30.6.	Commercial (branded) names, trademarks (trademarks and service marks) and geographical names (indications);	13.6.	Researches related to commercial (branded) names, trademarks (marks of goods and services), geographical names (indications).
30.7.	Topographies of integrated circuits (chips);	13.7.	Researches related to topographies of integrated circuits (chips);
30.8.	Commercial secrets (know-how) and innovative offers;	13.8.	Researches related to commercial secrets (know-how) and rationalization proposals;
30.9.	Economic examination on intellectual property;	13.9.	Economic researches on intellectual property.

3.2. An equally important criterion for the classification of expert research on intellectual property is ***subjects of their holding***. Relevant subjects are defined in Art. 7 of the Law of Ukraine *On Forensic Examination and Procedural Codes of Ukraine.* They are as follows: (1) research institutions of forensic examination (RSFEIP); (2) forensic experts who are not the RSFEIP employees; and (3) other specialists (experts) from the relevant branches of knowledge[38].

The state RCFEIP, in accordance with Part 2 of Art. 7 of the Law of Ukraine *On Judicial Examination* includes as follows: (1) research institutions of forensic examination of the Ministry of Justice of Ukraine; (2) research institutes of forensic examinations, forensic medical and forensic psychiatric institutions of the Ministry of Health of Ukraine; and (3) expert services of the Ministry of Internal Affairs of Ukraine, the Ministry of Defence of Ukraine, the Security Service of Ukraine and the State Border Guard Service of Ukraine[39].

Although, not all of the above-mentioned RCFEIP are certified forensic experts on intellectual property conducting expert appraisals and expert research in the field of intellectual property. To date, the vast majority of forensic experts on intellectual property are concentrated in the RCFEIP of the Ministry of Justice of Ukraine and the Ministry of Internal Affairs, or is the so-called 'private' court experts who are not employees of the RCFEIP.

Specialized forensic-expert institution with all-Ukrainian competence, which is the most concentrated forensic experts in the field of intellectual property in Ukraine, has been the Research Centre for Forensic Examination on Intellectual Property only, since 2004.

The main subject of forensic examination in the field of intellectual property remains, first of all, the judicial expert. The certified forensic expert is responsible for the quality and objectivity of forensic examination in the field of intellectual property in Ukraine. Abroad, first of all in the EU member states certified forensic experts on intellectual property are rare. The relevant examinations for the courts are carried out by experts whose candidatures are *ad hoc* appointed by the courts[40].

[38] Про судову експертизу : Закон України від 25 лютого 1994 року // Відомості Верховної Ради України. – 1994. – № 28. – Ст. 232.

[39] Про судову експертизу : Закон України від 25 лютого 1994 року // Відомості Верховної Ради України. – 1994. – № 28. – Ст. 232.

[40] Prawo własności intelektualnej / Red. naukowa J. Sieńczyło-Chlabicz. Seria Akademicka. – Warszawa: WoltersKluwer, 2015. – S. 510-512.

According to Part 1 of Art. 10 of the Law of Ukraine *On Forensic Examinations, forensic experts '... may be persons who have the necessary knowledge to provide a conclusion on the issues under investigation*'[41]. According to the analysis of the Register of Certified Forensic Experts, the number of forensic experts with valid certificates of qualification of a forensic expert on intellectual property as of July 1, 2018 is 107, which is more than in comparison with 2016 for 6 persons.

Forensic experts on intellectual property as of July 1, 2018 have a total of 265 human specialties, which is more compared to 2016 for 9 human specialties. These data indicate a steady state of affairs in the field of training and certification of forensic experts in the field of intellectual property.

An important criterion characterizing the prospects of forensic examination on intellectual property is the dynamics of acquiring (confirming) expert specialties on intellectual property. This criterion makes it possible to identify both the most promising types of forensic examination and those that do not have a prospect of development in Ukraine today.

Its analysis shows the dynamics of development of forensic expert activity on intellectual property issues on the basis of the criterion of acquiring (confirming) relevant expert specialties, the following conclusion can be drawn:

- The largest increase in the share, and consequently the increase in demand for forensic expert practice is observed in the specialties: 13.4: Research related to industrial designs – 3.8%; 13.6: Studies related to commercial (brand) names, trademarks (trademarks and service marks), geographical names (indication) – 3.7%; and 13.9: Economic research in the field of intellectual property – 2.7%;
- The largest reduction of the share, and therefore the decline in the relevance of forensic expert activity is observed in the following specialties: 13.2: Studies related to performances, phonograms, videograms, programs (broadcasts) of broadcasting organizations – 4,1%; 13.1.1: Studies related to literary, artistic works, and others – 4,1%; and 13.2: Studies related to performances, phonograms, videograms, programs (broadcasts) of broadcasting organizations – 2.9%.

[41] Про судову експертизу : Закон України від 25 лютого 1994 року // Відомості Верховної Ради України. – 1994. – № 28. – Ст. 232.

CONCLUSIONS

The classification of forensic examinations receives its continuation in integrating the detected types of forensic examination and their groups into the system and the doctrinal, substantive, functional, structural and other interrelationships revealed between them.

The internal structure (structure) of the forensic examination system on intellectual property issues is now represented by the following types of forensic examinations, differentiated according to the following criteria:

- ***By objects of intellectual property rights and expert specialties:***

(1) Researches related to literary, artistic works, and others (13.1.1);

(2) Researches related to computer programs and data compilations (databases) (13.1.2);

(3) Researches related to performances, phonograms, videograms, programs (broadcasts) of broadcasting organizations;

(4) Researches related to inventions and utility models (13.3);

(5) Researches related to industrial samples (13.4);

(6) Researches related to plant varieties (13.5.1);

(7) Researches related to commercial (branded) names, trademarks (marks of goods and services), geographical names (indications) (13.6);

(8) Researches related to commercial secrets (know-how) and rationalization proposals (13.8);

(9) Economic research in the field of intellectual property (13.9).

- ***By the number of expert specialties on which the following forensic examination is conducted:*** (1) simple (monoexperiments); (2) complex (complex examinations);

- ***By types of procedural proceedings, in which the following forensic examination on intellectual property issues is conducted:*** (1) forensic examinations carried out within the framework of economic legal proceedings; (2) forensic examinations carried out within the framework of civil justice; (3) forensic examinations carried out within the framework of criminal proceedings; (4) forensic examinations carried out within the framework of administrative legal proceedings; and (5) extra-procedural expert researches;

- ***By subjects of appointment and order of forensic examinations on questions of intellectual property:*** (1) forensic examinations carried out at the request of enterprises, organizations and institutions, regardless of the forms of their property (legal entities); (2) court examinations carried out by court decisions; (3) forensic examinations conducted on the

order of individuals and lawyers; (4) forensic examinations carried out at the request of the National Police of Ukraine; and (5) forensic examinations carried out at the request of the prosecutor's office.

- ***By the grounds and procedure for the appointment of forensic examinations on matters of intellectual property:*** (1) court orders, including judgments of the investigating judge; (2) a statement (letter) of the customer (physical or legal person) for conducting expert research; (3) ordering an examination by a participant in a civil proceeding; (4) the resolution of the bodies of pre-trial investigation in criminal cases filed before the Unified Register of Pre-trial Investigations (URPTI) till October 3, 2017; and (5) the written application of the victim or the party protecting the criminal proceedings;
- ***By the complexity of conducting forensic examinations on intellectual property issues:*** (1) simple; (2) medium complexity; (3) complex and special complexity;
- ***By subjects of conducting forensic examinations on intellectual property issues:*** (1) research institutions of forensic examination (RCFEIP); (2) forensic experts who are not the RCFEIP employees; and (3) other specialists (experts) from the relevant branches of knowledge.
- **By the number of court experts involved in conducting forensic examination on intellectual property issues:** (1) conducted by experts alone; and (2) commission assessments, *etc.*

The presented types of forensic examinations, as well as their groups, today form a system (from the Greek word 'σνστημα' means combination, formation) of forensic examinations on intellectual property issues is an ordered community of different types of forensic examinations and their groups, interconnected by doctrinal, substantive, functional, structural and other ties, which are aimed at protecting the constitutional right to objects of intellectual property rights.

SUMMARY

The publication is devoted to actual problems and prospects of development of forensic examination of objects of intellectual property rights in Ukraine in conditions of judicial reform. The main stages of approval and the development of forensic examination in the field of intellectual property in the context of the genesis of critical infrastructure protection mechanisms have identified, since 2002. The main stages of the genesis of forensic examinations of intellectual property issues in Ukraine

(2002 – 2019) are highlighted, as well as prospects for their further development.

It is noted that the forensic examination on intellectual property issues in Ukraine is new, unique for Europe and the whole world, as well as a dynamic and multifunctional type of forensic examination. This is manifested in the many types of forensic examinations in the field of intellectual property, which are classified according to different criteria: objects of intellectual property right and its properties; the type of procedural proceedings, within which a forensic examination on intellectual property issues is conducted, etc. The relevant types of forensic examinations, as well as their groups, today form the system of forensic examinations on intellectual property issues, which is an instrument for protecting the *'intellectual matrix'* of critical infrastructure of Ukraine.

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THE ROLE OF LEGAL SOCIALIZATION IN THE PROCESS OF FORMATION OF NATIONAL PROTECTION SYSTEM FOR CRITICAL INFRASTRUCTURE IN UKRAINE

Shvachka V. Yu.

INTRODUCTION

The concept of critical infrastructure is rather new for the world community and it is associated with the strengthening of terrorism and hybrid war threat. Great Britain was the first to speak about the protection of telecommunication, banking and finance sector, water supply, energy-saving and other systems, providing life support of the country and its economic growth.

Such problem is urgent for Ukrainian society too. With the adoption of the Concept for the establishment of a state system for critical infrastructure protection by the Cabinet of Ministers of Ukraine in 2017, the formation of a national system for the critical infrastructure protection began in Ukraine.

In order to create a state system for critical infrastructure protection in Ukraine, the Cabinet of Ministers of Ukraine defined the main directions of state authority activities in solving the main problems of the area, in particular, the need to determine the interaction of society and citizens involved in the critical infrastructure protection.

Relations arising in society are governed by historically established traditions, social and legal norms that determine the social and legal status of a person.

A modern law should become an effective regulator of the relations between society and citizens involved in the critical infrastructure protection.

The law in modern society is not merely a “phenomenon in itself”, but as an external phenomenon, a powerful regulatory means that requires a person to act in accordance with the requirements of law. In this sense, law is a social regulator, a special measure of freedom, based on the achievements of human civilization and culture development, and serves

as a criterion for determining the social usefulness (lawfulness) or danger (unlawfulness) of people's behavior and their associations.

Thus, universal human values dominate in the basis of norms of modern law and at the same time, the law is a mean by which they are implemented.

The right, in turn, is vested with priority in social regulation due to its obligatory (imperative) nature, formal definiteness and state safety; it can optimally ensure the normal functioning of a society that is a complex social organism[1].

According to Alexeyev S.S., mankind has no other way or other means of solving global problems that poses a threat of grave consequences for the human race, but to put modern law in the center of people's life. Only it, the law, can resist a possible catastrophe that threatens mankind in the situation (conditions) of "future anarchy", "liberty", arbitrariness of power, and terrorism[2].

The modern development of the theory of state and law gives a possibility to affirm that the law is not limited to the role of a normative regulator, but also actively affects the social domain, stimulating social groups, society as a whole to certain forms of behavior and interaction with each other, causing their certain relations with society. Thus, the law ensures the inclusion of individuals and groups in a unified system of social organization. This, in turn, makes it necessary to study not only the basic function of law, namely, the regulation of public relations, but also its specific function, such as legal socialization [3].

1. Legal Socialization as a Function of a Modern Law

For legal socialization, as well as socialization as a whole, not a mechanical reflection of external factors of influence in the person's mind is typical, but a combination of external influence and internal intellectual activity of the persons themselves. In this process, the external, passing through the subjectivity of the personality, is mastered, processed, assimilated, applied and used by a person in own practical activity.

[1] Львова О.Л. Право і релігія як ціннісно-нормативні системи // Правова держава. Випуск 17. – К.:Ін.-т держави і права ім.. В.М. Корецького НАН України, 2006. – С. 73

[2] Алексеев С.С. Линия права. – М.: Статут, 2006 – с. 270.

[3] Лапаева В.В. Социология права/ Под. ред. академика РАН д.ю.н., проф. В.С. Нерсесянца. – М., 2000 – с. 191.

The abovementioned aspects of use of the concept of "socialization" in sociology, psychology, political science and jurisprudence is an evidence that in modern socio-psychological and legal science there are different approaches to the definition of legal socialization of the personality. As a rule, the difference between these approaches is resulted from the desire of researchers to focus on the aspect of socialization, which they consider the most significant.

Thus, Kuril'sky-Ovzhin Sh., Arutunyan N.Yu., Zdravomyslova O.M. define legal socialization as an aspect of general socialization, the essence of which is the interiorization of legal norms, the adherence to rules and laws, as well as the formation of orientation on conformance (or deviation)[4].

Another definition of legal socialization, as the system with the main elements which are, on the one had, the objective conditions of life, the state of law order and legal culture, forming the socio-legal attitude of the personality, and on the other hand, a person alone with their specific social and socio-psychological qualities,– psychologist Auwyer L.I. gives in his study[5].

Spiridonov L. I. notes that the legal socialization of the personality is its inclusion in the existing system of public relations, accompanied by their mastering cultural values of any kind, and at the same time, their assimilation of law[6].

Among the prominent Ukrainian scholars, Holovchenko V.V., Kozyubra M.I., Kopeychikov V.V., Koretsky S.M., Nazarenko Y.V., Onischenko N.M., and Paterylo I.V. studied certain problems of legal socialization of personality.

Thus, the well-known Ukrainian legal theorist Kozyubra M.I. identifies legal socialization and legal education in a "broad sense", defining it as a set of legal influences (both purposeful and, to a certain extent, spontaneous), forming an individual legal consciousness[7].

In the point of view of other legal theorist, namely Kopeychikov V.V., legal socialization is the process of individual's entering the environment, gradually acquiring legal knowledge by them,

[4] Курильски-Овжиен Ш., Арутюнян Н.Ю., Здравомыслова О.М. Образы права в России и Франции. М., 1996. – с. 11.

[5] Аувяерт Л.И роль семи и сверстников в правовой социализации несовершеннолетних. Автореф. дис. канд.. психологических наук. М., 1982. – с.4.

[6] Спиридонов Л.И. Теория государства и права. М., 2001 – с.122.

[7] Правове виховання і соціальна активність населення. Київ, 1979. – с.32.

their involvement in society cultural achievements, the processes of cultural achievements embodiment in lawful behavior of the subject, their legal activity, practical transformation of legal relations in the direction of their progressive, humanistic development[8].

Paterylo I.V. associates the process of legal socialization of the personality with the values existing in society and defines it as the assimilation of legal knowledge by a person during all their life, as well as norms and values of the society to which they belong[9].

Holovchenko V.V. gives the definition of the legal socialization of the personality with the similar content: legal socialization is the process of assimilation of legal behavior models, legal norms and values by the individual, necessary for the person's successful functioning in a given society[10].

Onishchenko N.M. considers the legal socialization of the personality not only as a process of assimilating the perception of the society legal values, ideas, experiences, feelings and emotions of people by the subjects, but also as the implementation of legal evaluations, norms and behavior models[11].

Despite such diversity in the scientific literature of legal socialization definitions, all of them can be conventionally divided into three groups.

Arutunyan N.Yu., Zdravomyslova O.M., Kurilsky-Ovzhien Sh. are the representatives of the first approach in defining the concept of "legal socialization"[12] that is based on the fact that society is considered as a subject of socialization, and an individual as its object. Under socialization in this case we understand the person's entering the system of social-legal relations, involving them in the existing forms of activity. This person's entering the system of social and legal relations is carried out with the help of institutes and agents of legal socialization, through which the society forms the certain qualities in person that are necessary for them to exist in this society further.

So, in this approach the representatives interpret legal socialization as the education of respect for the law in a person, obedience in order to

[8] Загальна теорія держави і права. Навчальний посібник. За ред. В.В. Копєйчикова. К., 1998 – с. 140.

[9] Патерило І.В. Право як ціннісна категорія. Дисертація на здобуття наукового ступеню кандидата – с. 33.

[10] Головченко В.В. Право в житті людини (статті). – К.: Оріони, 2005. – с. 235.

[11] Методика правової освіти: Навчально-методичний посібник. – К.:Атака – Н, 2005. – с. 3.

[12] Курильски-Овжиен Ш., Арутюнян Н.Ю., Здравомыслова О.М. Образы права в России и Франции. М., 1996. – с. 11.

achieve person's conformism in relation to the legal system of society, that is, full integration of the person in the ruling legal system of society. This approach is characterized by complete neglect of the person's individuality and their natural activity.

The representatives of the second approach (Holovchenko V.V., Paterylo I.V. Onishchenko N.M.)[13] have an opposite point of view and consider an individual as a subject of legal socialization, but not society.

In their opinion, in the process of legal socialization, the individual assimilates and acquires certain qualities by which they adapt to the existing conditions of legal reality. The uniting element of the approach supporters is their common methodological principles, leading to a unified view of the legal socialization process, as adaptation of the individual to the conditions of environment in order to further its change. Thus, the subject, namely, an active part of legal socialization in this case, is an individual who mobilizes the possibilities of law and uses them to change the environment.

According to the representatives of the third approach (Kopeychikov V.V., Kudriavtsev V.M., Kazimirchiuk V.P., Onishchenko N.M.)[14], such opposition in the definition of "legal socialization" concept is not appropriate. Since legal socialization is a two-sided process of interaction between an individual and society in which both parties are active. An individual, as an object of legal socialization, is not deprived of legal activity; moreover, they can choose for themselves the main directions of this process, thus being both an object and a subject of legal socialization. In the process of legal socialization, the individual perceives external conditions of influence selectively. Thus, external (objective) conditions determine human behavior only to the extent that it relates to the internal (subjective) conditions formed as a result of the process of legal socialization.

Thus, in the process of legal socialization, not only society contributes to the formation of the personality, but also the personality, entering the system of public-legal relations, actively affects society.

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[13] Спиридонов Л.И. Теория государства и права. М., 2001 – с. 122
Патерило І.В. Право як ціннісна категорія. Дисертація на здобуття наукового ступеню кандидата – с. 33.
Головченко В.В. Право в житті людини (статті). – К.: Оріони, 2005. – с. 235.

[14] Загальна теорія держави і права. Навчальний посібник. За ред. В.В. Копєйчикова. К., 1998 – с. 140.
Кудрявцев В.Н., Казимирчук В.П. Современная социлогия права. М., 1995 – с. 102.
Методика правової освіти: Навчально-методичний посібник. – К.: Атака – Н, 2005. – с. 3.

Such a point of view is adhered by well-known legal scholars such as Kudriavtsev V.M. and Kazimirchiuk V.P. noting that socialization (including legal socialization) includes, on the one hand, the deliberate influence of social conditions, various social institutions on a person with a view of involving them in the system of concepts, evaluations, ideas, social norms and other cultural values adopted in society, on the other – social activity of the person in the process of socialization, as well as the formation of the personality.

A person, acting in a social environment, changes, improves it and at the same time changes own essence, forms new qualities and properties in themselves. Thus, a person in the process of socialization (including legal socialization) acts as the object and subject, affecting the outside world and the inner world, namely, spiritual[15].

According to author's opinion, such definition of socialization process is the most complete. Moreover, socialization definition, including legal socialization, as a two-sided process, does not contradict fundamental philosophic and sociological theories of G. Tarde T. Parsons.

Thus, the legal socialization of the personality should be understood as the process of forming a personality with an appropriate level of legal consciousness, which manifests itself in involving them to the system of society legal values, assimilating this system by them and in the return socio-legal activities of the personality aimed at correcting social values.

It is the level of legal consciousness of a personality that determines the nature of their behavior and the degree of socio-legal activity.

According to Oksamytny V.V., the socio-legal activity of the personality is the highest level of lawful behavior, reflected in the socially useful activities in the legal field, approved by state and society. This is primarily an initiative behavior. Socio-legal activity is determined by a high level of legal consciousness, a deep legal conviction, a formed independency, a conscious willingness to use the opportunity provided by law, be creatively guided by them in their daily life[16].

A number of authors (Holovchenko V.V., Neilip G.I., Nelip M.I.) also include to the characteristics of social and legal activity the following: voluntary performance of legal obligations; concern for raising

[15] Кудрявцев В.Н., Казимирчук В.П. Современная социлогия права. М., 1995 – с. 102.

[16] Правове виховання і соціальна активність населення. Київ, 1979. – с. 149-152; Міжнародна поліцейська енциклопедія: У 10 т / Відп. Ред.. Ю.І. Римаренко, Я.Ю. Кондратьєв, В.Я. Тацій, Ю.С. Шемшученко. – К.: Концерн «Видавничий Дім «Ін Юре», 2003. – с. 686.

the level of legal knowledge; the desire to take personal part in strengthening the rule of law order; active participation in law enforcement activities; intransigence to violations of the rights and legitimate interests of other citizens; readiness to protect citizens, personal legal interests from criminal encroachments; a principled position on the fulfillment of the law requirements by other persons, etc[17].

Person's socio-legal activity is based on a high level of their legal culture, an integral part of which is the individual values, that is, the system of their value orientations, which is a criterion for person's behavior.

Value orientations can be defined as the system of material and spiritual welfare, which a person and society recognize as a power over them, defining thoughts, deeds, and interpersonal relations of people[18].

It should be emphasized that values acquire social content, are realized and affect the consciousness and behavior of people only if they are deeply understood and perceived as value orientations. Otherwise, unrealized value exists independently of individual consciousness as an ideal category, serving as one of the sources of some contradictions between social and individual values, between consciousness and the practical behavior of a person[19].

Thus, the goal of legal socialization of personality is recognition of law as the main element of the system of person's values, which in turn will ensure effective interaction of society and citizens involved in the critical infrastructure protection.

Legal socialization of the personality has both internal and external meaning. The external meaning of the process of legal socialization manifests itself in the influence of all external objective law-making factors on the personality, which in turn, provides for manifestation and correction of the internal structure of the personality. Formation of a specific type of personality in turn reflects the internal subjective meaning of the process of legal socialization.

[17] Головченко В.В., Неліп Г.І., Неліп М.І. Правове виховання учнівської молоді: питання методології та методики. – К., 1993 – с. 21.

[18] Права людини: соціально – антропологічний вимір. Колективна монографія. Праці Львівської лабораторії прав людини і громадянина Науково-дослідного інституту державного будівництва та місцевого самоврядування Академії правових наук України. / Редкол.: П.М. Рабинович (голов. ред..) та іню – Серія І. Дослідження та реферати. Випуск 13. – Львів: Світ, 2006. – с.234.

[19] Патерило І.В. Право як ціннісна категорія. Дисертація на здобуття наукового ступеню кандидата – с. 24

For the first time, the concept of “internal” and “external” socialization to scientific circulation was introduced by Russian philosopher L.K. Sintsova, who notes that the process of perceiving social norms and values by an individual, the assimilating their social experience – that is, internal socialization. In its process, an active subject is an individual. Under external socialization, one should understand the transfer of social experience from society to the individual, where, on the contrary, society becomes an active subject rather than the individual[20].

Regardless of active or passive assimilation of socio-legal experience in the process of external legal socialization by the individual, its final result must be the formation of, first of all, active legal position of the personality. It is through daily observance, execution and use of legal norms in their activity, an individual not only cognizes the legal norms, but also forms the appropriate level of their legal consciousness. It is not possible to form an appropriate level of legal consciousness and legal culture of the personality only with the help of external factors of influence. A person is a conscious being that actively and selectively perceives external influence, and not passively adapts to the environment.

Thus, the result of external influence on the personality largely depends on their individual value system. Therefore, only if the person has a desire to perceive existing legal values in society it is possible the to use of external legal-socializing factors of influence effectively, which in turn indicates the important role of the individual’s self-consciousness, about their active life position in the process of legal socialization. It is self-consciousness, as a factor of internal socialization, contributes to the legal self-education of the individual and is a prerequisite for the legal socialization of the personality.

External legal-socializing factors and legal self-education of the individual, as an internal legal-socializing factor, should not be considered autonomously and absolutely independently of each other, since they are interrelated and are relatively independent aspects of a single process of legal formation and development of the personality, which provide the social conditionality of their legal formation and development, individual

[20] Синцова Л.К. Социализация личности и ее правые формы. Автореф. дисертации на соискание ученой степени канд. филос.наук. Л., 1986. – с.9

activity, which manifests itself in various forms of their practical activity and public relations[21].

The issues of correlation between external legal-socializing factors and legal self-education of the individual are associated with the problem of dialectical relations in all forms of social and individual activity, the creation of conditions in which the goals of public activities will meet the goals of individual activity.

So, despite the relative independence of the external objective and internal subjective legal-socializing factors of the legal socialization process, they will not be able to function effectively without each other. They are closely interconnected, interdependent and so interwoven with each other that even a slight change in the goals or methods of influencing of one of them simultaneously leads to a change of another, namely, reduces or increases total results of legal socialization of personality.

The possibility of transition of external objective legal-socializing factors into internal subjective ones and vice versa provides an opportunity to consider the process of legal socialization as a two-sided process of assimilating objective external factors of influence and simultaneous reproduction of personality's individual qualities. This, in turn, allows determining the process of legal socialization, involving conscious or subconscious assimilation of social experience, that is, the transition of external objective reality and communication into the inner mental activity of the legal consciousness, as well as in the reproduction of the experience previously acquired in the personality's legal consciousness in the element of reality.

It should also be noted that the formation of the personality with a high level of legal consciousness and legal activity, first of all, depends on the correct definition of the goals of personality's legal socialization, and only after that on the choice of one or another of its kind.

2. Mechanisms of Legal Socialization of Personality

The process of legal socialization of the personality can be understood only if it is studied in relations between the personality and social conditions of their life, public relations, the activity of this personality, aimed at changing the social environment and own self, personal ideas, views and actions.

[21] Галинайтите Ю. В. Правовая социализация рабочей молодежи: проблемы и решения. Автореферат дисертации на соискание ученой степени доктора юридических наук. – Москва, 1998. – с. 16

The existence of a real legal socialization process and personality's activity beyond the boundaries of public relations is impossible, as well as the existence of social relations outside the real life and communication of people. Thus, one can not imagine the process of legal socialization of the personality beyond the real socio-economic, political, cultural, legal and other social relations and communication, which is the basis of various types of human activity.

Public relations are not abstract relationships between people. This is an interpersonal communication, a constant process of mutual influence of people on each other, the confrontation of their needs and interests, the comparison of views and beliefs, the exchange of experience, as well as the results of activity, objectively embodied in material and spiritual culture, the implementation of mutual stimulation, activity control and correction. In communication rational, emotional and volitional mutual influence and interaction of people are carried out; a unity of attitudes and views is manifested and formed, the transfer and learning of habits, style of behavior, lifestyle is carried out, solidarity and unity arise, characterizing group and collective activities[22].

The public relations have a significant influence on the legal formation of the personality that have developed in society and reflect certain historical conditions of its formation. Each society has its own history, its logic of cultural, social, political and economic functioning.

Relations that arise in society are governed by historically established traditions, social and legal norms determining person's social and legal status.

One of the main factors determining the process of legal socialization of personality is the nature of relations between a person and society, and society and the state. The definition of the main tasks of legal socialization of the personality depends exactly from the person's place and role in the system of socio-legal relations. The presence of contradictions between subjectively planned, albeit the most humane goals and objectively existing public relations will necessarily lead to the negative consequences of the legal socialization process.

Legal socialization of personality is a specific historical phenomenon. Its meaning, purpose and stages are historical in nature and are determined by the socio-economic and political structure of society. That is why, in the process of legal socialization, not any abstract social legal

[22] Москаленко В.В. Социализация личности. К., 1986 – с. 23

qualities of the person are formed, but specific historical features of the personality necessary for them in daily live in a particular society.

Ignoring socio-historical conditions in the process of choosing ways and means of legal socialization of the personality may negatively affect its outcome. In addition, when choosing the means of legal socialization it is necessary to take into account the individual features of the object.

Therefore, the means of purposeful legal socialization, preferred in the transitional periods of state development, should be applied taking into account the socio-historical conditions of the society existence, as well as individual features of the personality, determining its selectivity in relation to the means of influence.

Legal socialization, being a specific process of formation of a socially active personality with a high level of legal consciousness and legal culture, as a full member of society, has its own internal structure and consists of certain stages.

The first stage of legal socialization of the personality is their social and legal adaptation, which involves adapting a person to the socio-legal conditions, role functions and legal norms inherent in the environment of their existence. Thus, in the process of social and legal adaptation, the person agrees their opportunities and needs with the actual situation in the surrounding environment.

The process of social and legal adaptation of the personality is particularly difficult in transitional periods of society development, since the legal consciousness of middle aged and elderly people who make up a great share of the population, is oriented to the legal system of the past. This, in turn, is explained the fact that it is much more difficult to adapt to new socio-legal conditions of reality for older people than for young people.

It is social and legal adaptation that is a mandatory stage of the person’s entry into the system of social and legal relations of reality.

The second stage in the process of legal socialization of the personality is interiorization, that is, the process of understanding of the legal traditions, legal culture and legal norms prevailing in this society that have been acquired by a person, which, as a result, either become a part of their internal convictions, or may be rejected by a person.

In order to become a real stimulus and regulator of lawful behavior, legal knowledge must transfer into value orientations, get an emotional coloring, and become internal conviction[23].

In the process of interiorization, the personality gives own evaluation of the categories, values and legal norms existing in society in accordance with the level of their legal consciousness and legal culture, which, in turn, reflect the system of social values objectively existing in a given society and subjectively reflected in individual behavior.

The result of interiorization of a personality is the formation of a certain type of legal thinking, typical of a particular person's system of values, that is, the formation of individuality of each personality.

The third stage of legal socialization of personality is exteriorization, resulted in the person's return external influence on the society. Having adapted to the socio-legal conditions of own existence, by assimilating legal norms, legal traditions, legal culture of society, including them in their own internal system of socio-legal values, the personality as an active subject with the proper level of legal culture and legal consciousness carries the reverse process of the society formation.

Therefore, the stages of the legal socialization process mentioned above can be defined as the structural components of its mechanism.

Thus, the mechanism of legal socialization of the personality consists of three components, namely:

– Socio-legal adaptation in which the person adapts to the existing legal norms, traditions, etc;

– Interiorization, that is, the process of assimilation of moral values, guidelines and legal norms, including them in the inner world of personality;

– Exteriorization, in the process of which a personality effects the environment through the "implementation into life" of views, ideas, beliefs of moral, legal and social values acquired in the process of socio-legal adaptation and redefined in accordance with individual characteristics and involved in the own internal world in the process of interiorization in order to change society as a whole.

The mechanism of legal socialization, in turn, is associated with the activity of legal and social institutions, special means of legal influence and control. At all stages of legal socialization, society, through its

[23] Шиханцев Г.Г. Юридическая психология. / Отв. Ред.. д.ю.н., проф.. В.А. Томсинов.– М.: Издательство «Зерцало», 2000 – с. 30;

institutions and agents, directly affects the personality. As a result, the transfer of relevant experience and knowledge, skills and abilities, system values and norms from generation to generation take place. Thus, legal socialization can become an effective means of forming the National System for the critical infrastructure protection of the country.

The concepts of "agent" and "institution" of socialization often merge into a single concept. However, distinguishing of legal socialization agents and institutions is a result of the level of their connection with the object of legal socialization.

Thus, an institution can be defined as a socio-political association, a social group where a person as well as a state body, institution, non-governmental organizations is a member, exercising influence over it as subjects of legal socialization.

In this case, the subject, through which the transfer of legal values is carried out directly, will act as an agent of legal socialization, whereas a person, to whom the actions of the institutions and agents are directed, will be an object to legal socialization.

Thus, institutes of legal socialization of the personality introduce a certain system of legal values through their agents, which, in turn, provide a direct link of society with the object of legal socialization – the person themselves.

To the main institutes of legal socialization S. M. Koretsky involves: family, school, electronic mass media and communications, the closest social environment (groups of leisure activities, production or training staff)[24].

Thus, the institutions of legal socialization are the state represented by bodies of state power, higher educational establishments, labor groups, various associations of citizens, schools, pre-school establishments, families, etc., and its agents, that is, direct participants in the process of legal socialization of personality, namely, parents, relatives, friends, teachers, officials, colleagues at work, etc. It is through the activities of institutes and agents of legal socialization that the influence of external factors on the personality is exercised. Effectiveness of each of them depends on many factors, and, above all, on the level of person's legal consciousness, age, state and the intensity of their inclusion in the socio-legal processes of society. The state, in turn, as one of the main institutes

[24] Корецький С.М. Кримінологічна характеристика девіантної поведінки неповнолітніх. / Автореферат дисертації на здобуття наукового ступеню кандидата юридичних наук. – К., 2003 – с. 13.

of legal socialization of the personality, should ensure the harmonious interaction of all other institutions and agents.

In our time, this fact becomes particularly evident. Substantial changes in the economic, political, legal and other domains of public life have caused the corresponding changes in the system of legal values, ideas and views.

The formation of a national system for the critical infrastructure protection in Ukraine requires additional legal socialization of the personality, as a result of which new social values should become the values of each person.

According to O.L. Lvova, the discrepancies between the social and individual values of the personality are the huge grounds for the fact that even the most justified and legal law can remain only a great proclamation, if its value of meaning and purpose does not coincide with the internal convictions of the person, do not come to life in their consciousness. That is why the great attention of both state bodies that create and apply law and scientists studying state-legal phenomena should be given to "breaking" of old, outdated and inactive stereotypes that have taken place since the Soviet era when a person existed for the state. If this does not happen, then all the efforts of Ukraine to achieve European standards will be useless. It is necessary to change the style of thinking and views, to re-evaluate priorities in own consciousness before trying to understand and accept new, effective and truly valuable standards dominating in the whole civilized world[25].

Thus, the quantitative indicator of person's legal values acquired in a certain period of life gains a qualitative value and transfers into their legal consciousness.

Considering the concept and meaning of legal socialization of the personality and defining its mechanism, it can be affirmed that the formation of a socially active personality takes place under the influence of all elements of the legal system. Such influence is carried out independently of the will of the persons themselves, the state bodies taking the relevant decisions, other subjects of law, since the state of the legal system as well as the functioning of its elements is a reflection of individual legal consciousness.

[25] Львова О.Л. Право живе та діюче (про ціннісні орієнтації права) // Часопис Київського університету права, № 1, 2007 р. – с.

CONCLUSIONS

To create a state system for protecting critical infrastructure in Ukraine there is a need to determine the interaction between society and citizens involved in the critical infrastructure protection.

A modern law is not limited to the role of a normative regulator, but also actively affects the social field, motivating social groups, society as a whole to certain forms of behavior and interaction with each other, causing their certain connections with society. In this way, the law ensures the inclusion of individuals and groups in a single system of social organization. This, in turn, makes it necessary to study not only the basic function of law such as regulation of public relations, but also its specific function, such as legal socialization.

The legal socialization of the personality should be understood as the process of forming a personality with an appropriate level of legal consciousness, which manifests itself in involving them in the system of society legal values, assimilating this system by them and in the reverse social and legal activities of the personality aimed at correcting social values.

It is the level of legal consciousness of the personality that defines the nature of their behavior and the level of socio-legal activity.

In the process of legal socialization, the personality is influenced by both internal and external factors. Not taking into account the relevant independence of external objective factors and internal subjective legal-socializing factor, they can not function without each other effectively. They are interrelated, interconnected and interwoven in such a way that a minor change of purposes or methods of influence on one of them leads immediately to the change of the other, in particular, reduces or increases the general results of personality's legal socialization.

One of the main factors determining the process of legal socialization of personality is the nature of relations between a person and society, and society and the state. The definition of the main tasks of legal socialization of the personality depends exactly from the person's place and role in the system of socio-legal relations. The presence of contradictions between subjectively planned, albeit the most humane goals and objectively existing public relations will necessarily lead to the negative consequences of the legal socialization process.

That is why, forming a critical infrastructure protection system in Ukraine, one should keep in mind such an effective function of modern law as legal socialization of the personality, which with a correct

definition of the purpose and means of its realization, will provide for an effective interaction of society, state and citizens involved in the critical infrastructure protection.

SUMMARY

The concept, meaning and essence of legal socialization of the personality are considered. It is determined that the legal socialization of the personality should be understood as the process of formation of the personality with an appropriate level of legal consciousness, which manifests itself in involving them in the system of legal values of society, assimilating this system by them and in the reverse social and legal activities of the personality aimed at correcting social values.

The main factors influencing the process of socialization under the modern conditions of Ukrainian society development are considered.

The mechanism of legal socialization is studied. Its main elements are determined.

The role of legal socialization of the personality in forming the critical infrastructure protection system in Ukraine, which can become an effective means of ensuring effective interaction of the society, the state and citizens, involved in the critical infrastructure protection, is formulated.

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CONCLUSIONS

Today, there are many documents in Ukraine governing the specific issues in this area. First of all, these are: the National Security Strategy of Ukraine (approved by the Decree of the President of Ukraine on May 26, 2015, № 287/2015); The Strategy of Information Reintegration of the Autonomous Republic of Crimea and the city of Sevastopol (approved by the Order of the Cabinet of Ministers of Ukraine on December 27, 2018, № 1100-p); the Concept of the state target program for utilization of components of liquid rocket fuel (heptyl) for the period up to 2020 (approved by the Order of the Cabinet of Ministers of Ukraine on March 14, 2018, № 161-p); The Concept of Strategic Communications of the Ministry of Defense of Ukraine and the Armed Forces of Ukraine (approved by the Order of the Ministry of Defense of Ukraine on November 22, 2017, № 612); the Strategy of development of the bodies of the system of the Ministry of Internal Affairs for the period up to 2020 (approved by the Order of the Cabinet of Ministers of Ukraine on November 15, 2017 № 1023-p); the Doctrine of Information Security of Ukraine (approved by the Decree of the President of Ukraine on February 25, 2017 № 47/2017); The Concept of the state target program for the restoration and development of peace in the Eastern regions of Ukraine (approved by the Order of the Cabinet of Ministers of Ukraine on August 31, 2016 № 892-p); the Strategic Defense Bulletin of Ukraine (approved by the Decree of the President of Ukraine on June 6, 2016, № 240/2016); Cyber-security Strategy of Ukraine (approved by Decree of the President of Ukraine on March 15, 2016 № 96/2016); the Concept of development of the security and defense sector of Ukraine (approved by the Decree of the President of Ukraine on March 14, 2016, № 92/2016); The Military Doctrine of Ukraine (approved by Decree of the President of Ukraine on September 24, 2015, № 555/2015); The Strategy for Sustainable Development “Ukraine 2020” (approved by the Decree of the President of Ukraine on January 12, 2015, № 5/2015) etc. Thus, there is no holistic approach to the management of protection and security of the whole set of such systems at the national level taking into account their interconnection.

In collective monograph «Formation and prospects for the development of national critical infrastructure protection system in Ukraine” the experience of developing the concept of critical infrastructure protection in Ukraine, the development of Ukraine on the way to European integration is revealed, the priority areas of such concept implementation in the system of national security provision in Ukraine are proposed. The results of the given research provide the solution for problematic issues of normative-legal and organizational support.

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