V.I. VERNADSKY TAURIDA NATIONAL UNIVERSITY

THE OPTIMIZATION OF PROTECTION MODEL FOR RIGHTS AND FREEDOMS OF UKRAINIAN PERSON

Collective monograph

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Reviewers:

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

Oleksandr Iliashko, *Candidate of Juridical Sciences, Assistant Professor at the Department of Constitutional and International Law of the Educational-Scientific Humanitarian Institute of the V. I. Vernadsky Taurida National University.*

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The monograph studies the issues of the current conditions for human rights and freedoms protection. Based on the analysis of current documents governing the human rights and freedoms protection, ways of improving the regulatory framework in this area are proposed.

The monograph is intended for a wide range of lawyers and professionals, scientists, lecturers, as well as students and postgraduates studying at law departments, as well as those interested in this issue.

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INTRODUCTION

The scientific and research work given is the subject of comprehensive generalization of the theoretic material “The optimization of protection model for rights and freedoms of Ukrainian person” with its critical analysis as well as formulation of new scientific conceptions. In the work a scientific priority providing initial scientific information to the society, serving to the description of the basic content and their scientific results is stated.

One of the priority tasks of our state is the protection of human rights and freedoms. In order to successfully solve such tasks, the state must protect and prevent the society from violation of these rights. Fundamental in this regard is the effective development of tools aimed at protection of these benefits and an effective set of measures. Therefore, there are scientific programs and plans at the state level including the Concept of the National Program of Adaptation of Ukrainian Legislation to the Law of the European Union (Law of Ukraine on November 21, 2002 № 228-15), Priority Areas for the Development of Science and Technology for the Period until 2020 (Resolution of the Cabinet of Ministers of Ukraine on 07.09.2011 № 942), the Concept of the National Program “Health - 2020: Ukrainian Dimension” (Order of the Cabinet of Ministers of Ukraine on 31.10.2011 № 1164-p); Plan of measures for the implementation of the Concept for the development of the public health system (the Order of the Cabinet of Ministers of Ukraine on 18.09.2017 № 560-p); Strategy for the development of scientific researches of the National Academy of Legal Sciences of Ukraine for 2016-2020 (the Resolution of the General Meeting of the National Academy of Legal Sciences of Ukraine on 03.03.2016); The Concept for the development of mental health in Ukraine for the period until 2030 (the Order of the Cabinet of Ministers of Ukraine on 20.12.2017, № 1018-p) etc.

In the scientific work with deep studying of such issue the amount of actual material is systematized and generalized as well as persuasive conclusions concerning effective and efficient national legislation development are obtained as a final result.

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ADMINISTRATIVE JURISDICTION AND THE CODE OF ADMINISTRATIVE LEGAL PROCEEDINGS OF UKRAINE AS REVISED IN 2017: IS IT A NEW SOLUTION TO A PROBLEM OR THE OLD UNRESOLVED CHALLENGES?

Bevzenko V. M.

INTRODUCTION

Full exercise of the right to appeal against a court decision, actions or inaction of state authorities, local self-government bodies, officials and officers (Article 55 of the Constitution of Ukraine)[1], the right to a fair justice[2] as well as successful protection of rights, freedoms, interests provide for the obligatory consideration of actual and normative preconditions. Such preconditions function as peculiar “filters”, since they prevent the unreasonable justice, preventing the court from considering and resolving inappropriate or unjustified disputes.

Although these preconditions-filters have their own nature, content and peculiarities, all of them determine the prospective of appealing to the court as well as opportunity for further protection of rights, freedoms and interests. Absence or non-conformity of one of such preconditions will make the opening of proceeding in a legal case, satisfaction of claim requirements complicated or even impossible, as well as preventing from legal proceedings in general.

It is considered that the preconditions for the protection of rights, freedoms, and interests of administrative-legal relations in administrative procedure are as follows[3] [4].

1) The compliance of all actual circumstances of the administrative-legal dispute with the criteria of administrative jurisdiction;

[1] 2. Конституція України від 28 червня 1996 року // Відомості Верховної Ради України. – 1996. − № 30. – Ст. 141.

[2] Конвенція про захист прав людини і основоположних свобод від 4 листопада 1950 року: ратифікована Законом України від 17 липня 1997 року № 475/97-ВР // Відомості Верховної Ради України. – 1997. − № 40. − Ст. 263.

[3] Бевзенко В.М. Передумови захисту в адміністративному судочинстві прав, свобод, інтересів учасників публічно-правових відносин / В.М. Бевзенко // Сучасна адміністративно-правова доктрина захисту прав людини: тези доп. та наук. повідомл. учасн. наук.-практ. конф. (м. Харків, 17–18 квітня 2015 року). – Харків: Право, 2015. – С. 73–76.

[4] Адміністративне судочинство України: теорія та практика: монографія / кол. авт.; за заг. ред. О.М. Нечитайла. – К.: ВАІТЕ, 2015. − С. 173–174.

2) The fact that the defendant violates the rights, freedoms, interests of the plaintiff;

3) The existence of the right of the subject to appeal to the court for appealing decisions, actions or inaction of state authorities, local self-government bodies, officials and officers, or for fulfilling the duties of the subject of authority;

4) The plaintiff's right to claim;

5) The plaintiff is in administrative-legal relations with the subject of authority, which is determined as a defendant;

6) Compliance of the method of judicial protection proposed by the plaintiff in the statement of claim, with the methods of protection stipulated in the norms of the Code of Administrative Legal Proceedings of Ukraine (Article 5, 245 of the CAP of Ukraine of 2017), as well as compliance of the method of judicial protection with the actual disputed administrative-legal relations;

7) Compliance of administrative discretion with the administrative court discretion; the possibility of interference of this court in the discretion of participants of administrative-legal relations from which a conflict has arisen;

8) The availability of precedence practice of administrative-legal dispute resolutions by the Supreme Court, the European Court on Human Rights.

The presence of administrative jurisdiction (compliance of all actual circumstances of administrative-legal dispute to the administrative jurisdiction criteria) is among such preconditions which require proper description and justification. This institution of administrative procedural law, although provided by the Code of Administrative Legal Proceedings of Ukraine and of fundamental importance not only for the administrative procedure, but also for judicial system of Ukraine as a whole, still remains an institution which meaning is determined insufficiently. Clarification of the type of court jurisdiction, differentiation of administrative jurisdiction from other types of court jurisdiction is the challenge in relation to administrative courts and participants in administrative cases, their representatives, and participants in the administrative procedure which has been not overcome yet.

Studying the topic of administrative jurisdiction, one should take into account the fast development of existing and emergence of new, until

recently unknown public relations as well as adoption of new legislation; one should expect the complexity of the court jurisdiction definition with the beginning of the procedural activity of the Supreme Court on intellectual property issues, etc. Therefore, there is an objective need not only to perceive these relations properly, but also to evaluate them, to make reasonable, legitimate conclusions based on unambiguous and clear criteria.

1. The Analysis of the Latest Studies and Publications

Determining a certain type of court jurisdiction, differentiating the administrative jurisdiction from other court jurisdictions is not an easy thing and it takes much time. Many legal scholars and lawyers-practitioners had to devote their research to this very issue. The essence and legitimacy of administrative jurisdiction, its limits and relations with other court jurisdictions was the research subject of V.V. Gordeeva, V.V. Ilkova, V. K. Kolpakov, R.O. Kuibida, O.M. Pasenyuk, V.G. Perepeliuk, M. I. Smokovich, V. S. Stefaniuk, M. I. Tsurkan[5] [6] [7] [8] [9] [10] [11] [12].

A lot of attention was paid to the content definition of administrative jurisdiction and its differentiation from other types of court jurisdiction (constitutional, criminal, economic, civil) by the Plenum of the Higher Administrative Court of Ukraine, in particular, in the resolutions "On certain issues of the administrative courts jurisdiction", "On the practice of application of legislation on access to public information by administrative courts"[13] [14].

[5] Колпаков В.К. Теорія і практика адміністративного судочинства: монографія / В.К. Колпаков, В.В. Гордєєв. – Чернівці: Місто, 2011. – 384 с.

[6] Ільков В.В. Правова природа справ адміністративної юрисдикції та її вплив на застосування джерел права в адміністративному судочинстві в Україні / В.В. Ільков // Наше право. – 2014. – № 5. – С. 60–70.

[7] Куйбіда Р. Межі адміністративної юрисдикції: спірні питання / Р. Куйбіда // Юридичний вісник України. – 2007. – № 25(625). – С. 6–7.

[8] Адміністративна юстиція України: проблеми теорії і практики. Настільна книга судді / за заг. ред. О.М. Пасенюка. – К.: Істина, 2007. – 608 с.

[9] Перепелюк В.Г. Адміністративне судочинство: проблеми практики / В.Г. Перепелюк. – К.: Конус-Ю, 2007. – 272 с.

[10] Смокович М.І. Визначення юрисдикції адміністративних судів та розмежування судових юрисдикцій: монографія / М.І. Смокович. – К.: Юрінком Інтер, 2012. – 304 с.

[11] Стефанюк В.С. Судовий адміністративний процес: монографія / В.С. Стефанюк. – Харків: Фірма «Консум», 2003. – 464 с.

[12] Цуркан М.І. Правове регулювання публічної служби в Україні. Особливості судового розгляду спорів: монографія / М.І. Цуркан. – Харків: Право, 2010. – 216 с.

[13] Про окремі питання юрисдикції адміністративних судів: постанова Пленуму Вищого адміністративного суду України від 20 травня 2013 року № 8 [Електронний ресурс] – Режим доступу: http://zakon0.rada.gov.ua/laws/show/v0008760-13

Thus, the Plenum of the Higher Administrative Court of Ukraine explained that when adopting the decisions on the norm reference to public law, and the dispute to public legal disputes, the courts should take into account general theoretical and legislative criteria, namely[15]:

– The party to a public-legal dispute is an executive power body, a local self-government body, their official or officer or other subject exercising power management functions;

– The dispute is public-legal, belongs to the jurisdiction of administrative courts and complies with the definition of an administrative case specified in clause 1, part 1, Art. 3 of the CAP of Ukraine of 2005;

– The existence of managerial legal relations and legal relations related to the public formation of the power subject.

In order to ensure the uniform application of the legislation provisions on access to public information by administrative courts, the Plenum of the Higher Administrative Court of Ukraine interpreted the concept of "public information" and other types of information, it interpreted the relation between the categories of "public information administrator" and "subject of authority", and also spoke about the effect of norms of the Law of Ukraine "On access to public information"[16] [17].

As we can see, the criteria for administrative jurisdiction were borrowed from the articles of the Code of Administrative Legal Proceedings of Ukraine of 2005. So, part 1, Art. 2 of the Code states that the task of administrative legal proceedings is "... the protection of rights, freedoms and interests of physical persons, rights and interests of legal entities in the field of public-legal relations from violations of ... public authorities, local self-government bodies, their officials and officers, other subjects in the exercise of their power management functions on the basis of legislation ... "[18].

However, the criteria of administrative jurisdiction indicated in the above mentioned and other clarifications of the Higher Administrative

[14] Про практику застосування адміністративними судами законодавства про доступ до публічної інформації: постанова Пленуму Вищого адміністративного суду України від 29 вересня 2016 року № 10 [Електронний ресурс] – Режим доступу: http://zakon3.rada.gov.ua/laws/show/v0010760-16

[15] Цуркан М.І. Правове регулювання публічної служби в Україні. Особливості судового розгляду спорів: монографія / М.І. Цуркан. – Харків: Право, 2010. – 216 с.

[16] Про окремі питання юрисдикції адміністративних судів: постанова Пленуму Вищого адміністративного суду України від 20 травня 2013 року № 8 [Електронний ресурс] – Режим доступу: http://zakon0.rada.gov.ua/laws/show/v0008760-13

[17] Про доступ до публічної інформації: Закон України від 13 січня 2011 року № 2939-VI // Відомості Верховної Ради України. – 2011. – № 32. – Ст. 314.

[18] Кодекс адміністративного судочинства України від 6 липня 2005 року № 2747-IV // Відомості Верховної Ради України. – 2005. – № 35–36, № 37. – Ст. 446.

Court of Ukraine and the Supreme Court of Ukraine have not become indisputable means in overcoming the difficulties of determining the legal dispute type, unequivocal differentiation of administrative jurisdiction from other types of court jurisdiction. The legal disputes provoking discussions about their branch nature include, in particular, disputes involving the Public Council for Good Faith, the Deposit Guarantee Fund for Physical persons, and the Self-regulatory (organizations) professions authority (e. g., the Audit Chamber of Ukraine, Qualification-Disciplinary Commissions of Attorneys etc.), bodies of judicial self-government, etc.

Therefore, we must admit that legal community has not obtained yet the criteria for administrative jurisdiction definition, as well as the comprehensive grounds for reference of legal dispute to administrative court competence have not been justified.

2. The Formation of Article Objectives

It is obvious that, finally, the unified generally accepted criteria of the definition of certain public-legal dispute belonging to the administrative court jurisdiction must be developed to guarantee the full protection of rights, freedoms, and interests, the exercise of the right to fair trial, the provision of judicial practice unity, and the stability of court functioning of judicial system. In turn, the belonging (non-belonging) of a certain public-legal dispute to the administrative court jurisdiction, as well as the possibility of its differentiation from other types of court jurisdiction, should be judged by the total presence of external features of public-legal relations, from which the dispute arose. It is these features that could serve as criteria for administrative jurisdiction[19] [20] [21]. The absence of at least one of them will make impossible to refer a particular public-legal dispute to the administrative court jurisdiction.

Such criteria which total presence can help us to come to the conclusion about the existence of administrative jurisdiction are the following:

1) Administrative-legal relations;
2) The subject of authorities;
3) The administrative activity (carrying out administrative powers);

[19] Бевзенко В.М. Адміністративна юрисдикція: поняття, сутність, проблеми відмежування / В.М. Бевзенко // Адміністративне право і процес. – 2013. − № 2(4). – С. 180–195.

[20] Бевзенко В.М. Новітнє адміністративне процесуальне право України: об'єктивна закономірність чи надумана вигадка? / В.М. Бевзенко // Форум права. – 2011. – № 1. – С. 68–73.

[21] Бевзенко В.М. Особливості визначення підвідомчості публічно-правових спорів / В.М. Бевзенко, С.М. Мінько // Вісник господарського судочинства. – 2007. – № 3. – С. 122–126.

4) Administrative law norm;

5) The exercise of rights and observance of obligations in the field of public administration and/or rights and obligations, for violations or non-observance of which may result in administrative consequences.

3. The Basic Material of the Study

In the Code of Administrative Legal Proceedings of Ukraine of 2005, the general criteria for determining the administrative jurisdiction, the scope and content of the competence of administrative courts were fixed. These criteria were peculiar markers, as their presence confirmed a public-legal dispute, which had to be considered and resolved by an administrative court. The conclusion on the normative consolidation of the administrative jurisdiction criteria in the Code of Administrative Legal Proceedings of Ukraine of 2005 can be made from the contents of Parts 1, 2 Art. 2, Art. 3, Art. 17, Art. 171-183[7], namely, the criteria based on the results after studying these norms, should be, in particular:

– Public-legal relations (part 1 Art. 2);

– State authorities, self-government bodies, their officials and officers, other subjects at carrying out power managerial functions, subjects of authorities (part 1 Art. 2, clause 7 part 1 Art. 3);

– Power managerial functions (part 1 Art. 2) ;

– Decisions, actions or inaction of the subjects of authorities (part 2, Art. 2);

– Administrative agreement, public service (clauses 14, 15 part 1 Art. 3 of the Code)

In addition to the criteria (criteria-markers), indicating the existence of administrative jurisdiction, in specific articles of the Code of Administrative Legal Proceedings of Ukraine in the revision of 2005, namely, in Art. 17, 171-183[7], the list of public-legal disputes, subject to the jurisdiction of administrative courts, was directly consolidated.

However, the presence of both criteria-markers and the list of public legal disputes did not always allow answering the question unequivocally and in full: “Is there an administrative jurisdiction in a particular legal dispute?” Such complexity in the administrative jurisdiction definition can be explained, first of all, by the impossibility to formally describe one or another criterion clearly and in full as well as the category of public-legal dispute, to correctly correlate them with the actual circumstances of the case. It is obvious the these criteria and categories (types) of public-legal

disputes have ambiguous evaluative legal nature, and thus, it is naturally that their perception and appropriate evaluation are carried out within the procedural discretion of administrative court, parties, third parties, and their representatives.

It is natural that the criteria evaluation of administrative jurisdiction at the discretion of the court determined the possibility of administrative courts to accept disputed decisions, even with regard to the same criteria of administrative jurisdiction or similar public-legal disputes.

In addition to the evaluative nature of the administrative jurisdiction criteria and public-legal disputes, their evaluation within the procedural discretion of the administrative court, the parties, third parties, their representatives, the impossibility of unambiguous description of these criteria and disputes is also resulted from their diverse scientific interpretations. In particular, modern science of administrative law has not yet developed a single and generally accepted understanding of the nature of all possible decisions, actions, inaction of the subjects of authorities, types of such subjects, the essence of public-legal relations, other criteria of administrative jurisdiction.

Finally, the conclusion on the administrative jurisdiction essence, its criteria and disputes that should be considered and resolved by administrative courts, taking into account the practice of functioning of the subjects of authorities (subjects of public administration) and the practice of administrative proceedings, must be substantiated by the science of administrative law and procedure. It is obvious that scientifically substantiated conclusions about the essence and criteria of administrative jurisdiction must unambiguously disclose the nature of this jurisdiction, while not depending on changes in legislation, reviewing of judicial practice, development and transformation of public relations.

In connection with the adoption and subsequent entry into force of the Code of Administrative Legal Proceedings of Ukraine of 2017, there were reasonable expectations that challenges (in particular relative to administrative jurisdiction) determined by the unequal implementation of administrative legal proceedings and other theoretical and applied peculiarities, finally, would have been successfully overcome. Therefore, it is time to ask a question: was experience of the Code of Administrative Legal Proceedings of Ukraine of 2005, taken into account in a new revision of the Code, and were unambiguous criteria for the determination of administrative jurisdiction introduced?

We should focus on the description of articles of the Code of Administrative Legal Proceedings of Ukraine as revised in 2017 and try to find out if they managed to overcome the existing problems of administrative jurisdiction, and describe its criteria (administrative-legal relations, the subject of authority, administrative activity (the exercise of administrative powers), the norm of administrative law, exercise of rights and observance of obligations in the field of public administration or rights and obligations, for violation or non-compliance of which administrative legal consequences may occur).

First of all, it should be noted that in the Code of Administrative Legal Proceedings of Ukraine of 2017 the following procedural categories were equated such as "administrative jurisdiction" and "judicature of administrative cases". It is easy to make sure, if you draw attention to the fact that in Chapter 2 "Administrative jurisdiction" of Section I "General Provisions" of the Code of Administrative Legal Proceedings of Ukraine there are articles which provide for "administrative jurisdiction" (Art. 19), "instance jurisdiction" (Art. 22-24), "territorial jurisdiction (judicature)" (Art. 25-28). That is, the term "administrative jurisdiction" covers both administrative jurisdiction and judicature of administrative cases[22].

Moreover, the Code has widened the nature of administrative jurisdiction: the content of administrative jurisdiction provides differentiation of public-legal disputes between local general courts and district administrative courts ("internal" administrative jurisdiction) (Art. 20) apart from the list of public-legal disputes which have to be considered and solved by administrative court as the holistic system ("external" administrative jurisdiction) (Art. 19).

At the same time with the updated presentation of the administrative jurisdiction essence in the Code of Administrative Legal Proceedings of Ukraine in the revision of 2017, new imperfect provisions complicating the application of its norms and, therefore, the implementation of administrative legal proceedings have appeared. In particular, in the case of non-compliance (violation) of rules on subject and instance jurisdiction (Art. 19, 20, 22-24 of the Code) it will be difficult to apply effective procedural instruments to overcome such non-compliance (violation).There is no specific legal norm authorizing to transfer administrative case in connection with the violation of rules on subject

[22] Кодекс адміністративного судочинства України від 6 липня 2005 року № 2747-IV; в редакції Закону України від 3 жовтня 2017 року № 2147-VIII // Відомості Верховної Ради України. – 2017. − № 48. − С. 5.

and instance jurisdiction (judicature) in the Code of Administrative Legal Proceedings of Ukraine in the revision of 2017.

It seems that it is possible to fill such legal gap by using the law analogy (Part 6, Art. 7 of the CAP of Ukraine in the revision of 2017) together with, in particular, Art. 29, 171 of the Code.

The courts of appeal and cassation have powers for the correction of consequences of incorrect determination of subject and instance administrative jurisdiction. Thus, according to the results of consideration on the court resolution appeal of the court of first instance, the court of appeal has the right to cancel the court resolution and refer the case for consideration to another court of first instance according to the established judicature (clause 5, part 1, Art. 315 of the CAP of Ukraine in the version of 2017). The court of cassation instance based on consequences of cassation appeal consideration has the right to cancel court resolutions of courts of the first and/or appellate instances in full or in part and to transfer the case in full or in part to a new consideration, in particular, in accordance with the established judicature or to continue the consideration (clause 2, part 1, Art. 349 of the CAP of Ukraine in the revision of 2017)[23].

The analysis of norms of the Code of Administrative Legal Proceedings of Ukraine, as revised in 2017 (Art. 2, 19), proves that administrative-legal relations are still used as an administrative jurisdiction criterion. However, in the same way as in the Code of Administrative Legal Proceedings of Ukraine of 2005, such legal relations have still lacked a comprehensive description of their essence and principal features. Therefore, it seems obvious that the justification of legal relations will remain in the field of legal science (in particular, the science of administrative law and procedure), the conclusions of which should be properly examined by administrative proceedings practice.

The Code of Administrative Legal Proceedings of Ukraine stipulates the content of “a subject of authorities” concept in a comparatively wide way in the revision of 2017. Thus, the concept is supplemented by such subjects as attestation, competition, medical and social expert commissions and other similar authorities, which decisions are mandatory for state authorities, local self-government bodies, and other persons

[23] Кодекс адміністративного судочинства України від 6 липня 2005 року № 2747-IV; в редакції Закону України від 3 жовтня 2017 року № 2147-VIII // Відомості Верховної Ради України. – 2017. − № 48. − С. 5.

(Clause 9, Part 1, Art. 19 of the Code)[24]. However, unambiguous conclusions about belonging of one or another holder of authorities to the subjects of authorities is quite difficult to make from the content of the Code of Administrative Legal Proceedings of Ukraine of 2017 as well, and therefore, one should evaluate the nature of a particular subject based on an analysis of actual disputed legal relations, forms of activity of the subject-defendant, the consequences of exercising their powers for physical persons or legal entities.

Considering an administrative activity as an external manifestation of the subjects of authorities' activities, one can observe, though not fundamental, but certain changes to this criterion in the Code of Administrative Legal Proceedings of Ukraine as revised in 2017. Thus, in addition to the exercise of executive power functions such as conclusion, execution, termination, cancellation of administrative agreements (Art. 4, 19), it is provided that the activity of the subject of authority may be expressed in the form of administrative service. However, these manifestations of administrative activity are not the only ones. It is worth mentioning that the subjects of authorities take general organizational measures, apply measures of administrative coercion, etc. Therefore, the list of administrative activity forms of the state authorities, stipulated by the Code of Administrative Legal Proceedings of Ukraine in the revision of 2017, remains open and incomplete, and changes in relation to the administrative activity of the subjects of authorities are not fundamental and they do not solve the problem of administrative jurisdiction as a whole.

The Code of Administrative Legal Proceedings of Ukraine of 2017 formulated the definition of normative and legal acts and individual acts for the first time (clause 18, 19 part 1, Art. 4) in addition to such criterion of administrative jurisdiction, as a resolution, action, inaction, an administrative agreement. At the same time, it is known in the practice of functioning of the subject of authorities the following cases when they adopt such acts, which name varies from "normative legal act", "individual act": a resolution, decision, tax notice-decision, protocol, electronic record, etc. So, one can assume that the problem of the nature and type definition for a certain document of the subject of authorities, also complicated by absence of the Code (Law) on Administrative Procedures, will have existed for a certain time.

[24] Кодекс адміністративного судочинства України від 6 липня 2005 року № 2747-IV; в редакції Закону України від 3 жовтня 2017 року № 2147-VIII // Відомості Верховної Ради України. – 2017. − № 48. − С. 5.

The administrative law norm, the exercise of rights and observance of obligations in the field of public administration or rights and obligations for violation or non-compliance of which may result in administrative legal consequences are substantive legal criteria, therefore they could not be fundamentally updated or revised in the Code of Administrative Legal Proceedings of Ukraine in the revision of 2017. With the introduction of the Code in a new revised version, these criteria remained unchanged. Therefore, the definition of the nature of law, the type of rights and obligations, essence of public administration will continue to be a problem that has an administrative-legal dimension.

CONCLUSIONS

It should be stated that having evolved to a certain degree, the Code of Administrative Legal Proceeding of Ukraine as revised 2017 in general, has kept its structure and content. It is supplemented by new institutions (electronic court, settlement of dispute with judge participation) and categories (typical, pattern administrative case), some procedural institutions and categories have been renewed (for example, a judge assistant, expert on law issues is referred to the participants of administrative procedure, the list of disputes belonging to administrative jurisdiction is added).

The content of administrative jurisdiction has been expanded, and now it covers substantive jurisdiction, instance jurisdiction and district jurisdiction (judicature). However, the criteria for determining these types of jurisdiction under the Code of Administrative Legal Proceedings of Ukraine, as revised in 2017, remain essentially unchanged: the object of dispute, the subject (participant) of dispute, court instance, the place of residence (residence, location).

We can see that together with the renewal of the Code of Administrative Legal Proceedings of Ukraine a lot of provisions have appeared requiring additional analysis and justification, that will make administrative legal proceedings more complicated, accordingly, as well as the evaluation of administrative jurisdiction etc.

It is possible to assume that the existing problem of administrative jurisdiction definition and its differentiation from other court jurisdictions will continue to exist.

It can be explained, primarily, by the denial of the existence of complex, multi-branch legal relations; a single and generally accepted understanding of the nature of all possible decisions, actions, inactivity of

the subjects of authorities, types of such subjects has not been developed. It is believed that the nature of legal relations and the type of court jurisdiction are determined by the legal outcome that occurs as a result of these legal relations.

We hope that overcoming the challenges of definition of court jurisdiction type is a matter of close future, coming closer by developing constant judicial practice by cassation courts, Grand Chamber of the Supreme Court. At the same time, the response about the nature of disputed legal relations as well as determination of administrative jurisdiction criteria has to be formed by the administrative law and procedure science based on the outcomes of administrative proceedings practice.

The following criteria of administrative jurisdiction are offered: 1) administrative-legal relations; 2) the subject of authorities; 3) administrative activity (implementation of administrative powers); 4) the norm of administrative law; 5) the exercise of rights and observance of duties in the field of public administration or rights and obligations, for violations or non-compliance which may result in administrative consequences.

Certainly, in view of the scientific and technological progress achievements, the emergence of new social relations and the adoption of new legislation, these criteria should in no case be taken as final and implicit. They must be constantly reevaluated and tested for suitability with regard to newly emerging social relations.

However, in order for this Code to be used effectively in addressing the problems of administrative jurisdiction, it will be necessary to dedicate a long time to the insistent development of sustainable judicial practice in public-legal disputes, strengthening it by theoretical and applied arguments.

SUMMARY

Although administrative jurisdiction as an institution of Administrative Procedural Law is envisaged by the Code of Administrative Legal Proceedings of Ukraine and is of great importance not only in the administrative procedures but also in the entire judicial system of Ukraine, it is still not defined in full.

In order to guarantee the full protection of rights, freedoms, interests, the exercise of the right to a fair trial, ensuring the unity of judicial practice, and the stability of the judicial system functioning, the unified

and generally accepted criteria for the determination of a particular public-legal dispute's belonging to the jurisdiction of the administrative court must be developed.

One should make conclusions about belonging (non-belonging) of certain legal dispute to the administrative court jurisdiction as well as about the possibility of its differentiation from other types of court jurisdiction based on a set of external features of public legal relations that caused such disputes.

Having evaluated the articles of Code of Administrative Legal Proceedings of Ukraine of 2005, it is easy to verify that the law-maker declared in general terms the criteria for the determination of the administrative jurisdiction, the framework and content of the administrative courts' competence. However, such criteria do not allow coming to the single conclusion on the type and nature of a certain public legal dispute.

The content of administrative jurisdiction is supplemented; it contains substantive jurisdiction, instance jurisdiction and territorial jurisdiction (judicature). However, the criteria for the determination of these types of jurisdictions, mainly, remain unchanged – the object of the dispute, the subject (participant) to the dispute, the court instance, the place of residence (location).

It is assumed that the objectively existing problem of the administrative jurisdiction definition and its differentiation from other court jurisdictions will still exist in the future. In our opinion, it can be explained, first of all, by the denial of the existence of complex, multi-branch legal relations; a single and generally accepted understanding of the nature of all possible decisions, actions, inactivity of the subjects of authorities, types of such subjects has not been developed. It is believed that the nature of legal relations and the type of court jurisdiction are determined by the legal outcome that occurs as a result of these legal relations.

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Information about the author:
Bevzenko V. M.
Doctor of Law,
Professor at the Department of Administrative Law,
Judge of Administrative Court of Cassation
of the Supreme Court of Ukraine

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PROBLEMS OF DISTRIBUTION OF STATE AND LOCAL AUTHORITIES IN UKRAINE

Bortnyak V. A.

INTRODUCTION

The modern world is changing rapidly. Development of situation in Eastern Ukraine showed that the system of public administration Ukraine was unprepared to prevent and respond to acts of aggression of the Russian Federation, and therefore needs to be improved. The strategic planning system requires improvement. Strategic planning as a function of public administration defines goals, objectives, priorities and a set of measures to implementation of state policy. According to the National Security Strategy of Ukraine improving the state of strategic planning, a unified system of monitoring, analysis, forecasting and decision-making in national security and defence is one of the priorities of the national security policy.

Decentralization of power and an effective system of local government is the most important aspect of the modern state. At present proper local government is an important factor in the democratization of public life, decentralization and a prerequisite of civil society. As the example of the European Union's democratic and effective governance, Ukraine should build a viable democratic state, the legal framework which meets EU legal framework and the rule of law. For example, as the base of decentralization in France, Germany and Poland is territorial reform and decentralization, which are based on the principles of the Charter and the draft charter on regional self-government. Thus, the system of local government in Ukraine needs drastic changes, regulatory, at first, material and financial, logistical and information support. The aim of the study is to examine the current system of local government in Ukraine, scientific analysis of the feasibility and benefits of implemented reforms for decentralization and subsidiary of local authorities, decentralization of public power and public control, and the need to strengthen the political status of local governments.

1. Political struggle in Ukraine: the establishment of power

On June 28 Ukraine marked the Constitution Day. Twenty two years ago, back in 1996, the Ukrainian state adopted its Supreme Law. Today it has again come into the spotlight before the presidential elections Yuliya Tymoshenko, whom the opinion polls dub the leader of the presidential campaign, claims the need for the "new social contract". Meanwhile, the actual President Poroshenko spoke of his intention to introduce into the Constitution Ukraine's aspiration to become an EU and NATO member. These attempts to change the Constitution are not new to Ukrainian politics: over the 22 years the Law has been subject to change six times, and it thus reflects well the country's past as well as all its political battles. UCMC takes a look at the path of Ukraine's Supreme Law, its most daunting problems and at the changes to expect shortly[1].

MPs managed to adopt the Supreme Law in long-standing discussions during the presidency of Leonid Kuchma. It happened on the legendary "Constitutional night" of June 28, 1996. Since then Ukrainians got to live through many changes that the Constitution incurred. Nearly each president was trying to amend it to his benefit in the standoff with the Parliament, the most persistent in this regard turned to be Viktor Yanukovych. The Supreme Law has always been slightly inconvenient for the state leaders, and they were thus trying to rewrite it in this or that way in order to change the balance of powers in the country.

One of the biggest collisions of the Ukrainian Constitution is the balance of power between the President and the Parliament. It is this balance that has seen the biggest battles unfold around it over the past two decades. For ten years – between 1996 and 2006, Ukrainians lived in a parliamentary-presidential republic where the President enjoyed wide powers. Then between 2006 and 2010 – Ukraine turned into a presidential-parliamentary republic with the strong Parliament. Afterwards there was a switch back to the presidential model that lasted four years until 2014. Finally, after Euromaidan the Parliament regained more powers once again. The return to the parliamentary-presidential model occurred in February 2014 after the presidential powers of Viktor Yanukovych were suspended[2].

Starting from 2003 political forces of Viktor Yanukovych and Leonid Kuchma initiated the constitutional reform that sought to weaken the

[1] Ситник Г. П. Державне управління у сфері націо- нальної безпеки (концептуальні та організаційно-правові засади) : підручник. Г. П. Ситник. К. : НАДУ, 2017. С. 119.

[2] Ситник Г. П. Державне управління у сфері націо- нальної безпеки (концептуальні та організаційно-правові засади) : підручник. Г. П. Ситник. К. : НАДУ, 2017. С. 204.

President's powers and to pass to the Verkhovna Rada (Ukraine's Parliament) the right to form the government of Ukraine. Their motivation was quite simple: they realized they were not going to win the presidential elections. The "Orange" forces of the opposition of Yushchenko and Tymoshenko were ardently protesting against the reform as they were confident in the victory of their candidate at the presidential elections of 2004[3].

The Law amending the Constitution (on the political reform) foresaw the transition from the presidential-parliamentary to the parliamentary-presidential governance form as well as empowered the coalition of parliamentary factions to form the government and extended the term in the office for MPs to five years. The changes came into force in 2006 after the victory of the Orange Revolution and boasted support from the then-President Yushchenko who then made a decision to unite with the political force of his former opponent Yanukovych joining forces against Yuliya Tymoshenko[4].

It comes as a paradox but after Viktor Yanukovych and hisParty of Regions acceded to power the party's position as to the state system made a 180-degree turn. At the post of the President Yanukovych was in try to reinforce his power. On September 30, 2010 Ukraine's Constitutional Court, under the evident pressure by Yanukovych, ruled previous constitutional changes that he himself had initiated several years before being not in line with the Constitution of Ukraine. The Ukraine's Constitutional Court restored in power the Constitution of 1996 and Ukraine became a presidential-parliamentary republic again.

Last time the Constitution was subject to change following the Revolution of Dignity. On February 21, 2014 the then-president Viktor Yanukovych and the leaders of the opposition signed an agreement that foresaw the return to the Constitution of 2004 balancing the powers of the Cabinet of Ministers (the government), the President and the Parliament. The Verkhovna Rada voted in the draft on the same day. The President Poroshenko elected several months after, has not been changing the balance of power since then.

Throughout Poroshenko's presidency the balance of power has not been subject to change. Instead the President initiated and implemented several important changes to the Constitution.

[3] Семенченко А. І. Методологія стратегічного планування у сфері державного управління забезпеченням національної безпеки України. А. І. Семенчен- ко. К. : НАДУ, 2015. С. 163.

[4] Семенченко А. І. Методологія стратегічного планування у сфері державного управління забезпеченням національної безпеки України. А. І. Семенчен- ко. К. : НАДУ, 2015. С. 187.

Several months after Petro Poroshenko was elected President, a draft law on decentralization introducing amendments to the Constitution was submitted to the Parliament.

The main novelties that the draft law brought were financial decentralization of the regions and posts of prefects, it also granted to the President the right to dismiss local councils and a possibility for specific local self-governance in the defined regions of Donetsk and Luhansk regions. The draft law in question passed the first reading only. On June 2, 2016 the Verkhovna Rada adopted the changes to the Constitution in the justice part to re-launch the judicial system and set the judiciary free from corruptionists. The main principles of the judicial reform became the return to the three-layer judicial system, establishing of the Supreme Council of Justice, mandatory re-attestation of all Ukraine's judges, mandatory asset declaration for judges and their family members as well as stripping them off the immunity.

In mid-June the Constitutional Court of Ukraine ruled constitutional the presidential draft law amending the Constitution's Article 80 (revoking the immunity of MPs) that is to revoke the parliamentary immunity starting from early 2020. The document is still a draft law and is subject to the parliamentary voting. On the Constitution Day the President insisted that European integration should be affirmed by the Supreme Law. Petro Poroshenko said he would soon submit a proposal to the Parliament to amend the Constitution respectively. The amendments are supposed to affirm Ukraine's aspirations to become a member of the EU and NATO[5].

The numerous amendments made to the Supreme Law in course of all the political battles of the past decades are not the only problem of Ukraine's Constitution. Other drawbacks include imperfect text and, in particular, the contradictory definition of economic rights that may become an obstacle on the way to reforms. So that the voices of those aiming for the new Constitution will be becoming louder each time.

The Constitution contains a series of economic rights that the state cannot provide for. "This Constitution has served its term for a series of reasons. Firstly, it is unrealistic. When the Constitution is lying, so does everyone else. The Constitution contains a whole block of rights, the so-called economic rights that only the countries having the GDP per capita of USD 30 thousand per year may afford. (…) When they talk about

[5] Богданович В. Ю. Основи державного управління забезпеченням обороноздатності України: теорія і практика. В. Ю. Богданович, М. Ф. Єжеєв, І. Ю. Свида. Львів : ЛІСВ, 2015. С. 119.

affordable accommodation, free healthcare and education here, they are actually killing the healthcare, doctors, patients and higher education – neither of our universities entered the world's top 100 ranking," lawyer and activist Hennadiy Druzenko said during the forum "The Country's New Plan" (Novyi kurs krayiny) organized by Yuliya Tymoshenko. The healthcare reform that kick-started this year has already come across the criticism: the aspirations of the healthcare reformers to clearly define free and paid services, introduce insurance-based healthcare system have already come across a populist argument that the Constitution stipulates the right to "free healthcare"[6].

Moreover the Constitution is being often criticized for being eclectic – comprising the provisions from the Soviet Union times and the current European ones. From the very beginning it was a transitional document requiring change. One may clearly sense the conflict between the then-left forces (the Socialist Party) and the then-reformers (Leonid Kuchma's party) in the text of the Supreme Law. These contradictions do not come to a compromise, instead they lead to eclecticism and result in contradictory provisions.

The complexity of the situation lies in the fact that despite the imperfection of the actual text of the Constitution, it does not allow for adoption of a brand new Supreme Law. Even its biggest critics admit it. "Since the Constitution's adoption in 1996 it has been changed several times to an extent when it is not clear what is functioning in the state and in what way. So that the only way out of this situation is to adopt a new Supreme Law of Ukraine," the first president of Ukraine Leonid Kravchuk said. At the same time he claims that the actual Constitution contains an article prohibiting the adoption of a new Supreme Law. The article suggests that the document can only be amended not changed entirely.

Whether these will be amendments to the law or a new constitution – the main problem stays in the attempts to politicize the Supreme Law as well as the respective crisis of trust to it in the wider society. If the Constitution stipulates what is not actually there in practice and what cannot ever happen, if every political force is rewriting the law to its benefit, it undermines the citizens' trust to the state. Restoring this trust would be the priority task for the Ukrainian political class.

[6] Семенченко А. І. Методологія стратегічного планування у сфері державного управління забезпеченням національної безпеки України. А. І. Семенчен- ко. К. : НАДУ, 2015. С. 354.

2. The system of state administration against the actions of the Russian Federation

The functions of strategic planning are prognostic, programming and design. Sometimes they are referred to the procedures of strategic planning. This strategic prognostication – a form of planned activities is to anticipate the scientific prediction of the object at a specified future time. Analysis conducted by the results of the results of the Defence Review within the framework of the comprehensive review of the Security and Defence Sector of Ukraine. Determined that the development of the politico-military environment throughout the world and around Ukraine is determined by the following major trends: the establishment of the multipolar relations system, attempts to change the existing power balance, first of all by the leading world nations[7].

This is reflected in the fact that over the recent years the role of the world's major centres of power such as the North American led by the USA, the Western Europe under the leadership of the European Union, the Eurasian led by the Russian Federation, the Asia-Pacific with leading positions of China and Japan is being strengthened. There is also the establishment of new centres of power under the auspices of such countries as India, Turkey, Iran and Brazil. Under current conditions there are attempts to change the existing balance of powers among the major global centres; intensification of contradictions between the leading centres of power regarding the division of spheres of influence. Aggravation of geopolitical rivalry between the Euro-Atlantic and European collective security systems on the one hand, Eurasian and Asia-Pacific systems – on the other remains crucial for the formation of politico-military situation at the current stage of global change.

The growth of economic, technical and military potentials of the global centres' participants leads to intensification of the struggle for influence in areas of their strategic interests. The growth of international competition for access to natural, technological and other resources significantly affects the formation of the politico-military situation in the world. Intensification of contradictions between the global centres of power results in the retention of «frozen» and the emergence of new conflicts, their periodic aggravation in the Caucasus and Central Asian regions, the Balkans, the Middle East, Ukraine, Transnistria and other regions. Support of separatism, ethnic and religious confrontation, internal

[7] Сектор безпеки і оборони України : зб. наук. матеріалів / [Ф. В. Саганюк, М. М. Лобко, О. В. Устименко, В. І. Пеньковський] ; за ред. Р. І. Тимошенка. К. : Майстер книг, 2018. С. 85.

instability, causing «loyal regimes» provides the basis for aggravation of contradictions and the emergence of new armed conflicts; the increase of interdependence of the leading states in the context of globalization, the growth of influence of leading global corporations, intensification of struggle for natural resources, use of energy factor for political ends. Globalisation is a characteristic feature of the current world evolution, which significantly influences the economies of states, strengthens their interdependence, and sharpens rivalry for access to energy resources[8].

Along with the positive factors globalisation provokes the increase of inequality in the distribution of world resources, leads to turbulence of international capital flows and related conflicts and crises. The division of the world into rich centre and poor provinces still remains the problem in the context of development gaps of the countries belonging to the so-called «golden billion» and other countries. A negative consequence of globalisation is the political instability, which is manifested in the increasing number of disabled, unrecognised states and degrading or failed states. There is a crisis of power in many countries, the development of democratic processes is being constrained, separatist movements are gaining momentum.

The situation is deteriorating as a result of crisis processes in macroeconomics. Escalating competition is being expected, particularly in such areas as access to resources (primarily - energy), struggle for maintenance and expansion of zones of influence; the reduction of the efficiency of measures applied for crisis management and military conflicts settlement by the leading international organizations. Cooperation with the leading global and regional international organizations, maintenance of mutually beneficial partnership relations at the bilateral level remains an important factor in creating foreign policy conditions that will affect the security level of any country of the world. However, there is a tendency to reduce the effectiveness of mechanisms of countering aggression by the existing international collective security systems. Under these conditions, strong states are trying to impose their will on weaker partners contrary to international law[9].

This explains the aspiration of many countries to provide their own security through active cooperation with EuroAtlantic and European collective security systems; preserving the role of military force as a

[8] Сектор безпеки і оборони України : зб. наук. матеріалів / [Ф. В. Саганюк, М. М. Лобко, О. В. Устименко, В. І. Пеньковський] ; за ред. Р. І. Тимошенка. К. : Майстер книг, 2018. С. 119.

[9] Yarger Harry R. (Harry Richard) Strategy and the national security professional : strategic thinking and strategy formulation in the 21th century. Harry R. Yarger.

means of solving problematic issues of politico-military relations. Over the recent years there has been a tendency towards more explicit use of military force in pursuance of politico-military objectives. At the same time there are significant changes in forms and ways of using military force, new approaches to armed struggle appear, including the use of nongovernmental paramilitary organizations. In many cases this reduces the effectiveness of international collective security systems and complicates the application of international law to resolve conflicts; the desire of individual states to succeed in the military-technical sphere and create opportunities for the production of weapons of mass destruction.

Despite the difficult financial and economic conditions of the global economy development after 2008–2009 crisis, there is an increase of military budget of the countries, purchase of new materiel, the increased danger of uncontrolled proliferation of nuclear weapons, carriers and materials for their production, as well as dual-use technologies; the spread of terrorism (including cyberterrorism), piracy, organized crime, illegal immigration, illicit trade in arms, drug and human trafficking. international terrorism, piracy, transnational organized crime, human, arms and drugs trafficking, «black transplantation», struggle for spheres of influence, violent shift of power in certain countries are leading to the increased international instability. There is a rapid intensification of terrorist activities in cyberspace[10].

The solution of such problems requires consolidated efforts by the whole international community; acceleration of the information technologies development, increasing the capabilities of states to conduct information and information-psychological operations, increasing the sensitivity of the society to the death of peaceful population and casualties of military units in armed conflicts. The information factor within foreign policy implementation of the leading nations and insurance of their national interests accords even greater importance. This is increased by the swift development of the newest technologies.

As the recent years has shown, the value of information technology for the achievement of geopolitical goals will grow and acquire the role of one of the main factors in modern conflicts. Modernization and improvement of technical intelligence systems by the foreign intelligence services, increase of their capabilities, attempts of unauthorized access to the information infrastructure of the state and its use against the interests

[10] National Security Strategy and Strategic Defence and Security Review 2015 [Електронний ресурс]. – Режим доступу : https://www.gov.uk/government/ uploads/system/uploads/attachment_data/ file/478933/52309_Cm_9161_NSS_SD_Review_ web_only.pdf

of Ukraine, monopolization of the telecommunications services market by the large foreign companies and their attempts to impose to the state their conditions for national information and communication networks and systems operation are becoming threatening factors for the information security system functioning in Ukraine, hinder the development and use of information sphere and endanger the vital interests of human and citizen as well as society and the state under the conditions of information society development and globalization of information exchange in Ukraine; global climate changes, depletion of natural resources, growing deficit of drinking-water, food and increased migration in the world.

Global climate changes along with other global humanitarian issues: aggravation of demographic situation, constant «food crisis», rising unemployment, impoverishment of broad layers of population, increased migration – create a favourable social base for radical extremist movements and terrorist forces and is the basis for destabilization of the situation in both individual regions and the whole world.

The security environment in the medium and long term is characterized by the number of challenges and threats to the national security of Ukraine that are related to possible use of military force against it: the infringement against state sovereignty and territorial integrity of Ukraine by foreign states, terrorist organizations and separatist movements operating in Ukraine; simplification by the Russian Federation of legal procedures on the use of military force beyond its own territory, justification of the use of military force as means of settling international disputes; interference into the internal affairs of Ukraine by the foreign states, including the support of political and other organizations, the activities of which are aimed at violation of the constitutional order, territorial integrity and sovereignty of Ukraine, internal socio-political stability, law and order; impediment to Ukraine's joining the existing and perspective collective security systems; violation by states of international agreements, agreements on non-proliferation of weapons of mass destruction and their means of delivery, arms control, limitation and reduction of armaments; building up of forces and materiel near the southern and eastern borders of Ukraine, establishment of new and expansion and modernization of existing military bases and facilities, causing the imbalance of powers in the region; aggravation of humanitarian problems related to the internal movement of population from the zone of armed conflict in the eastern Ukraine and the occupied Autonomous Republic of Crimea; activation of intelligence, reconnaissance and sabotage activities of the foreign special services, and

other governmental or non-governmental international organizations against Ukraine; disclosure of information constituting a state secret, illegal collection and use of information in the areas of defence, state security, economy, science and technology, and endangering information security of the state; danger of committing terrorist acts, including in cyberspace, on critical infrastructure facilities of Ukraine by the reconnaissance and sabotage groups of special services of foreign states, terrorist organizations and separatist movements operating in Ukraine; promoting illegal import of weapons, ammunition, explosives, radioactive materials and narcotics, weapons of mass destruction to Ukraine; using the crisis in Ukraine-Russia relations by foreign countries to shake out Ukraine from the traditional arms markets, discredit Ukraine as a reliable partner in the issues of military-technical cooperation; using energy, trade and economic dependence of Ukraine to achieve politico-military objectives; using military force in the region or involving states in the region, presence of «frozen» conflicts, including those near the borders of Ukraine, and creating conditions to spread instability in Ukraine; enhancing separatist sentiments in areas densely populated by ethnic minorities in Ukraine, and active support of such activities by individual countries; political, financial, military or other support of paramilitary or armed groups, terrorist organizations in Ukraine that are not provided by law; strengthening information and psychological influence on Ukraine in order to destabilize politicosocial situation in Ukraine or in certain regions and areas densely populated by ethnic minorities; using of political or economic sanctions against Ukraine, the suspension of diplomatic relations with Ukraine; violation of the Convention on the High Seas of 1958 because of piracy acts against marine vessels or aircraft of Ukraine; increasing flow of irregular migrants to Ukraine or through its territory as a result of armed conflicts, deterioration of the socio-economic situation of individual countries. Internal environmental and technological challenges and threats will significantly affect the National Security of Ukraine in particular: excessive man-made impact on the territory of Ukraine, increasing the possibilities of man-made and natural disasters; obsolescence of equipment of high-risk sites, communal infrastructure of residential areas and waste treatment facilities of enterprises; environmental abuse, radioactive, chemical and biological pollution, a problem of transboundary pollution; ineffectiveness of measures taken to manage the negative consequences of the military and other environmentally hazardous activities; deterioration of the ecological state of water basins, aggravation of the transboundary pollution and water quality deterioration, aggravation of technogenic status of hydraulic

engineering structures of the multireservoir system on the river Dnipro; inadequate control over import to Ukraine of environmentally unsound technologies and materials, pathogenic agents, use of genetically modified organisms[11].

Capabilities of Ukraine to respond to these challenges and threats are limited by such internal conditions and factors: difficult economic situation, high level of population poverty and unemployment; corruption, high level of crime, including organized and armed; radicalisation of political parties and movements; the presence of cultural, religious and language contradictions in the society; unresolved issues related to the delimitation of Ukrainian borders; incompleteness of the reform of Unified State Civil Defence System; disequilibrium and incompleteness of system reforms, including those in the defence sphere of Ukraine; ineffective state policy on defence planning and military construction; low level of the defence capability of Ukraine, insufficient mastering of forms and methods of modern warfare by the Armed Forces of Ukraine and other military formations; vulnerability of information infrastructure of the state, first of all critical information infrastructure facilities; imperfection of training system, insufficient level of practical proficiency of military experts and their adaptation to the modern warfare conditions; low level of defence orders, actual absence of search and applied works related to the production of high-tech defence products; technological obsolescence of the equipment of military-industrial complex enterprises; lack of closed cycles of domestic production of a considerable materiel; outflow of highly skilled experts of the militaryindustrial complex from Ukraine; sharp decrees of the competitiveness level, and moral obsolescence of domestic defence and dualuse goods[12].

The features according to which the activities of other states (coalitions of states) are classified as threat of use of military force against Ukraine and give grounds to identify potential military enemy, include: raising the ultimatum, satisfaction of which may result in violation of the constitutional order, territorial integrity and sovereignty of Ukraine; suspension of diplomatic relations with Ukraine; permission of another state to use its territory by a third state (coalition) for the preparation and commitment of aggression against Ukraine; the adoption of the regulatory act by another state, allowing the use of its armed forces on the territory of

[11] Про створення експертно-аналітичної групи Міністерства оборони України з питань проведення за- ходів оборонного огляду : Наказ Міністерства оборони України № 397 від 17 черв. 2014 р. 3 с.

[12] Щипанський П. В. Нове безпекове середовище – прогнозовані виклики та загрози національній безпеці України. П. В. Щипанський, П. М. Крикун, О. В. Устименко. Зб. наук. пр. Центру воєнно-стратегічних досліджень Нац. ун-ту оборони України ім. Івана Черняховського. 2015. № 1 (53). С. 107–113.

Ukraine; economic and information blockade of Ukraine; acts of provocation on the state border of Ukraine; actions disrupting military formations and special-purpose agencies' C2 system, or resulting in the impossibility of execution of functions by the national security actors; activation of intelligence and subversive activities against Ukraine as well as military intelligence in Ukraine; political, financial, military or other support of armed groups or terrorist organizations in Ukraine that are not provided by law; conduct of general, limited mobilization or deployment of military forces, building up of groups of the armed forces of neighbouring countries, increasing the intensity of military exercises near the state border of Ukraine; leaving without the agreement with Ukraine provisions on the location of units of the armed forces of another country, which according to the concluded international agreements stay in Ukraine, as well as on the activities to use such units against a third country; actions disrupting the security of the nuclear and chemical industry facilities, military-industrial complex, facilities storing materiel, ammunition, and other potentially dangerous items[13].

3. Features of decentralization of local authorities in Ukraine

The system of government in Ukraine is not fulfilling the role assigned to it, because there is twofold subordination and uncertainty powers of representative and executive bodies. Today there is a three-level administrative division: basic level (village, town or city), district level and level area. There is a local government council and executive body (all the decisions and programs approved by the Regional Council performed by RSA, those public authorities). On the one hand, the council is formed in the general election; on the other hand there is executive body – the State Administration. Thus, there is a conflict between appointed and elected government.

The situation is similar at the district level, where all the heads of administration by the Constitution (Law of Ukraine, 1997) are appointed by the President. By 28 December 2014 baseline had the resources to fulfil their mandate (resources coming from the state budget through the area). Thus there is a need for continued reform of local government on the principles of decentralization and subsidiary principle (Reform concept, 2014), as they are the foundation for building the state. The basis of this principle is the understanding and acceptance of the fact that all problems should be solved at a basic level, the central government can

[13] 9. Нормативно-правова база у галузі безпеки і оборони України. Вид. 2-ге, допов. К. : Центр дослідження армії, конверсії та роззброєння, 2017. С. 419.

play a subsidiary, the subsidiary, not a subordinated role, and should give the regions the opportunity to make decisions[14].

As you know, the regions of our country developing unevenly: someone has minerals, others – developed industry, someone – agriculture and others. So the state should allow them to find their path of development and thus, at the community level, to decide how they want to develop further. Each unit of government is a legal entity, has property rights and powers delegated by the state. For which it shall have sufficient financial resources, and the state owes most of these resources to leave the field. Currently, the law provides (Law of Ukraine, 2006), which is based on state regional program area should adopt their own local programs. Each approved program will receive Regional Development Fund (totalling three billion UAH) funds, 80% of which will be distributed evenly, and 20%, respectively, to those who can no longer finance its part.

Thus, the distribution mechanism Regional Development Fund becomes transparent and understandable. Previously the government determines to which region and on financing coming today law provides for the interdepartmental commission, which will be the body that coordinates the execution and implementation of programs. Locally created regional development agencies with OSA on the basis of public-private partnership (these belong to representatives of the chamber of commerce, NGOs, and local authorities). For example, in the EU (Hungary, Slovakia and Poland) to promote regional development created a separate executive agency. Now, for the regional development of our country, the EU has allocated 55 million euro, will implement a number of small programs. If these funds are used wisely, next year you can expect a much larger amount to half a billion USD.

Proposal reforms to decentralize power on the ground are that the three-tiered structure remains, but unlike the current situation where at district and area is under State Administration and State Administration, through amendments to the Constitution should be established district and regional executive bodies. For example, the state council approves the executive committee during the session, as the district council will form its executive committee. Exist and district administration and state administration, which appointed the President of the Government's submissions. This reform should take place through changes in the

[14] 10. Kropyvko M.F., & Malik M.J. Integration and self-organization of the agricultural business in the decentralization of power: monograph. K.: NNC IAE, P. 224.

Constitution. As a result, local authorities will lose their atypical features – such as enforcement of regional or district council[15].

They were left alone control function and implementation of government programs, as head of the local administration appointed by the President on the proposal of the Government. Also, the administration will coordinate the activities of executive bodies in the regions (for example, pension funds, prosecutors, and police). Rather than carry out the decisions of local governments, the administration will carry out overall control and supervision of regional and district councils.

Thus, the powers of local state administrations can be divided into: own – exercise executive functions in certain areas (software protection, orphans, etc.); coordination – coordination of territorial bodies of central executive bodies within the area and the region; Control – for control of the legality of acts of local government and the quality of local government public services. And to the office of the district are: – Maintenance of common property territorial community area; - Transport infrastructure of regional importance; - Education and training of children in boarding schools, youth sports school; - Provision of secondary health care (medical centres, hospitals, maternity homes, etc.)[16].

Features of decentralization of public administration reform One of the hallmarks of a modern democratic society has become political decentralization, the function of which is the implementation of a public authority which is independent of the state entities unrelated relationship of subordination.

The degree of autonomy is determined that they belong to a relatively independent of the type of public authority – local government. Thus, decentralization of public power implies exclusion of a self-governing part of the government formation with fixing this exclusion as in the Constitution, so (mostly) and current legislation. The People's Deputies identify the legal and organizational basis of the right of territorial communities to participate in public control over the implementation of their rights. Public control will affect local governments and utilities. The corresponding proposal contains a draft law "On public control". The bill provides that public control – is the work of public control, such as full members of the territorial community, local departments of public associations and political parties, community organizations and MPs of supervision, inspection and evaluation of: - local governments; - public

[15] On ratification of the European Social Charter (revised): Law of Ukraine of 14.09.2006. Number 137-V. Retrieved from: http://zakon.rada.gov.ua

[16] On local government in Ukraine: the Law of Ukraine of 21.05.1997 p. Number 280/97-VR. Retrieved from: http://zakon.rada.gov.ua

enterprises, institutions and organizations; - educational and health care, culture and social protection; - legal and physical persons – service providers in the relevant community.

Also, this project concerns legal and physical persons that receive the local budget, as well as those whose work affects the interests of the local communities in terms of environmental pollution, fire safety, sanitaryepidemiological and radiological situation of food safety. The activities of the mentioned bodies will be tested on the compliance of such activities with the laws of Ukraine and the interests of the local community. The procedure for the implementation of public control should take place in a sociological and statistical research, public monitoring, assessment and verification, reporting on the work of public control, preparation and submission of proposals to local authorities on the results of public control, discussing the subject of public scrutiny at public meetings. Reports subjects of public control of the work are available to the public without fail by their publication or public hearing. Thus, this law will increase the openness and transparency of local government, enterprises, institutions and organizations. Thus, the specificity of decentralization alienation of government necessitates the division of socially important needs and interests to those whose satisfaction is a function only of the state, and those, the implementation of which can be transferred to other entities. Only because of this clear separation of State may transfer to other entities of significant secondary for themselves but socially necessary functions[17].

Dismissal States from these features contribute to the stabilization of the government as the practical implementation of a number of socially necessary functions close to the consumer of public services and state removed from responsibility for certain functions. However, incorrect distribution of functions without regard to their social significance, the exercise of those or other entities to ensure implementation of the necessary resources and responsibilities may adversely affect the ordering of public life. However, one should take into account aspects under which the centralization policy is seen as the only constructive consolidating and stabilizing society.

The need for reforms to strengthen the political status of local government The need to strengthen the political status of local government as a junior public authorities have in many scientific studies. But, clearly, this is backed up not only referring to the generally recognized principles of democracy and European standards, but more

[17] On cooperation of communities: Law of Ukraine of 06.17.2014 p. Number 1508-VII. Retrieved from: http://zakon.rada.gov.ua

real facts that emphasize the effectiveness of management of decentralized power[18].

The most convincing of these are:

The decentralized power provides a more efficient allocation of resources in the sector of public goods. This fact is based on the notion that these kinds of benefits depends on the needs and interests of people living in a particular area. As a result, the institutional system, in which political decisions taken at local and regional levels to make those resources, is making public option more accurate. As a result, rational policy supports particularly those development programs which promote the growth of the prestige and increase the chances of winning the next election. Thus public choice at the local level allows better meet the needs of the population in public goods and services without increasing the volume of resources.

Decentralization enhances the controllability of the public authorities of the local communities, as the link between taxes paid and the provision of public goods is more direct and transparent. Local politicians are more difficult to hide the inefficiency of public spending, forcing them to be more responsible in developing and implementing local policies.

Availability of own competence of local public authorities in forming the local tax base and the disposal of local budgets, availability of appropriate material and financial resources enables them to form an independent policy development of local communities, encourages them to reduce unjustified costs in the public sector. Thus, hover facts make it possible to assert that the reform of local self-government and territorial organization of power in Ukraine is impossible without political will, which would contribute to the adoption of a significant number of laws and the will of local communities to unite. After the process of decentralization and reform of administrative and territorial structure in many European countries lasted more than 5 years, so you cannot expect instant results by adopting the necessary laws.

Research methodology The methodological base for research on decentralization and local government reforms to strengthen the political status of local government and decentralization of public power is the Constitution of Ukraine, Laws of Ukraine, Decrees of the President of Ukraine, as well as publications on these issues of domestic and foreign authors. In this direction domestic scientists have taken a number of important steps, including the study of the theoretical foundations of

[18] Pron'ko L. (2016). Decentralization of power and the beginning of local government reform in Ukraine. Economy in the context of innovation development: state and prospects: materials of International scientific-practical conference (12-13 February). Uzhgorod, p. 163.

government, constitutional principles of its implementation, the history of government in Ukraine, features contemporary national governments. Restructuring local government in Ukraine and Poland's experience in reforming local government investigated many Ukrainian scientists in 2013, 2014, 2015, respectively.

Findings Systematic reforms in terms of priority must be given a New Constitution that guarantees enhanced political status and European standards of local government. International experience and practice show that the reform process must start building the foundation of territorial authorities to build economically capable community to reform the administrative and territorial structure.

CONCLUSIONS

Implications of these and other challenges and threats may be the use of military force against Ukraine through armed aggression (according to the features listed in the Law of Ukraine «On the Defence of Ukraine»), armed conflict on the state border or within the country, involving Ukraine into military conflict between other states. These ways of military threat materializing may be combined with one another and arise consecutively or simultaneously. In view of the trends and conditions of the development of the security situation around Ukraine, the possibility of aggravation of the politico-military crisis and its escalation into a local or regional war in the short and medium term is considered to be serious.

Update the constitution makes sense only if the implementation of new constitutional provisions will open the prospect of the adoption of laws necessary for optimization of the public authorities, the territorial organization of power in Ukraine, improving local governance. The implementation of these tasks is the essence of true reforms in decentralization of power and development of local self-government. They should create institutional preconditions for the implementation of various sectoral reforms. According to many experts, the reform for Ukraine should take place in two phases: voluntary and systematic. At the current stage of voluntary adopted the Law "On voluntary association of communities", "On cooperation of local communities", "On Principles of regional policy." Systemic step is to amend the Constitution, the adoption of new laws "On Local Government", "On local state administrations" (that they were not executive bodies and supervised and coordinated state policy), "On service in local government" (to finally determine who is a civil servant in the city council).

SUMMARY

Adopting the constitutional amendments would be the most favorable outcome for continued decentralization, as this would enable substantial devolution of authority at the sub-national level. Replacing the constitutional changes with piece-meal legislation would bring limited success in establishing oversight over sub-national governments, while at the same time risking to backfire through further centralization and potential abuse of power by national authorities. As with many reforms in Ukraine, passing the constitutional amendments would require sustained engagement and pressure from a variety of actors. Our recommendations below are addressed to the Ukrainian authorities, domestic civil society, and the international community.

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Information about the author:
Bortnyak V. A.
Candidate of Law Sciences, Assistant Professor,
Assistant Professor at the Department of Constitutional
and International Law
of the Educational and Humanitarian Institute
of the V. I. Vernadsky Taurida National University
33, Ivan Kudria str., Kyiv, Ukraine

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FEATURES OF THE IMPLEMENTATION OF THE REFORM OF PUBLIC ADMINISTRATION AND THE PROVISION OF ADMINISTRATIVE SERVICES IN UKRAINE

Bortnyak K. V.

INTRODUCTION

According to the theory of organizations, a comprehensive development of the country is possible only with the targeted effective functioning of all its elements. Territorial and administrative components of any state are grassroots structural units that form its administrative and territorial division. Necessity of administrative reform came up simultaneously with the independence of Ukraine. Absence of political will, changes in political system and periodic elections and crisis hold over this process. Main problem on the way of building effective administrative and system of giving public service is the division of power between local government and central administration. Division of power, financial resources and control are three whales, that made base for an effective model of local self-government. Key-problems of implementation administrative reform in Ukraine are: 1) the principle of «voluntary» community association, 2) it is impossible to reform the local government without changes to the Constitution, 3) local elections take place on the old territorial basis, 4) conservatism of the local elite and the reluctance to change anything at all. Moreover the key-myth is that the administrative-territorial structure of the country will be radically changed, and in fact the map of Ukraine will be re-mapped. The reality is that the major changes will affect the local level - the community, the number and boundaries of regions and districts will not be changed. The practical implementation of the administrative reform involves changes in three dimensions: 1) territorial (change of administrative-territorial system), 2) administrative (delegation of significant powers to the local level, change of power vertical), 3) financial (redistribution of budget funds in order to target them to community level). To summarize, the political consensus on the model of the territorial structure of Ukraine and on the status of the Donbas is necessary for the successful implementation of the administrative reform. Administrative reform should be aimed

primarily at satisfying the needs of the community in order to improve their standard of living and provide quality management services.

1. Principles of the establishment of administrative reform in Ukraine

The reformation of regional policy in Ukraine has started with decentralization of public administration and reformation of local government based on experience of the EU members and in particularly, Poland. In Ukraine the decentralization is first mentioned in the Constitution of Ukrainian People's Republic on April 29, 1918, which states: without breaking unitarily power UNR provides its lands and communities rights for wide self-government according to the principle of decentralization. The excessive centralization of regional development, which has been a norm for Ukrainian regional policy till 2013, has resulted in many negative consequences. It has contributed to the increase of contradictions between «center» and regions, and between «communities–districts–regions», that impeded regional social and economic development, and led to the emergence of destructive ideas of federalization. The process of reformation of public administration in Ukraine should be comprehensive and consistent.

The priority aspects of decentralization should include: the shift away from centralized model of regional development; the economic viability of regions and local self-government; the building of the effective system of territorial organization of power. The decentralization of state government as a base for reformation of Ukrainian regional policy involves: i) the transfer of powers, responsibilities and resources from national level to local governments and regional authorities; ii) the increase of the power of local communities in their relations with the center; iii) granting regions the right to develop and implement their own development strategies; iv) the concentration of resources required for internal development. Under decentralization the great importance must be given to the issues of financial security of regions based on the securing of stable sources of tax revenue, and the differentiated provision of educational and medical subventions.

The implementation of such trends will contribute to social and economic development of regions and communities, create opportunities to provide high-quality services to all citizens, strength the principle of democracy in work, and ensure the formation and implementation of their own strategies for social and economic development without excessive administrative control of national government. Ukraine anticipates the

fiscal decentralization, the strengthening of the fiscal autonomy of local governments on the basis of revenue sharing between the center, local authorities and local governments, which requires changes in the existing system of the interaction of budget levels (that is, the list of fixed incomes and standard withholdings from regulated revenues at all levels for a long term, not less than 5 years).

The decentralization of the budget process stipulates the increasing number of financial sources for local budgets, in particular by the attaching for local budgets some part of the corporate income tax of the companies operating within the respective territories, excise duty, environmental tax, subsoil use fees, the fees for special use of national natural resources etc. The state budget should be formed in the amount needed to finance the government, the defense and security, important national programs and funds of convergence of social and economic development of regions. The state should thus make the budgetary provision for residents in all administrative units at the guaranteed level established by law. Essence and importance of administrative and territorial reform Ukraine has so far retained the two-level territorial divisions that emerged in former USSR[1].

First level is region (oblast), second is districts and all settlements (cities of regional subordination, urban settlements, and villages). As of 1 January 2014 the territorial and administrative system included: the Autonomous Republic of Crimea, 24 regions, cities of Kyiv and Sevastopol, 490 districts, 460 cities, 885 towns, 10 279 village councils, 28 397 villages[2].

The current territorial structure of Ukraine is characterized by: the existence of disparities in regional development; the different availability of services including administrative ones; the uneven funding of territorial and administrative units calculated as per capita; the complex mechanism of interaction between local authorities and locals; the imperfect system of local self-government. The inefficiency, inconsistency, excessive centralization, distance from the interests of real people are typical for the current territorial and administrative system. The existing territorial and administrative structure does not promote the effective regional development. It causes problems of social and economic recession and the depopulation of much of the country. Under current conditions a comprehensive territorial and administrative reform has become

[1] The Constitution of Ukraine: Official text – Kyiv : Palyvoda A. V. 2016. 64 p.
[2] Derzhavna sluzhba statystyky Ukrayiny [Elektron. resurs]. http://www.ukrstat.gov.ua/.

particularly important and necessary taking into consideration an aggravation of political and economic situation and European line of development in Ukraine.

The territorial and administrative reform should provide for the changes in the territorial and administrative structure and organizational system, and the national and local authority performance. The government work should be aimed at creating more supportive environment for social development based on the balance of individual, collective (public) and national interests. The goal of reform is to strengthen territorial unity of the country and to ensure more effective regulation of society development, allocation of economic and financial resources, expansion of facilities and financial framework of territorial and administrative units. The decentralization of power will reduce social and political tensions in the country, and promote its comprehensive development.

The necessity for administrative and territorial reform is caused by obsolescence and mismatch of the current structure to the modern development of Ukrainian economy and to the system of its functioning mechanism that has negative impact on political and economic system of the country. The current territorial structure of Ukraine is characterized by the excessive dissemination of administrative units on local level. Most of them do not have sufficient economic potential for development. The main tasks of territorial and administrative reform in Ukraine should be following: the decentralization of public authority, the enhancing role of local selfgovernment and its reformation through consolidation of territorial units in accordance with the NUTS system.

In the process of territorial and administrative reform it is necessary to ensure: the transition to new system of territorial and administrative structure based on formation of integral territorial and administrative units; their administrative, financial, economic, social, demographic security with respect to the regional features. It is also necessary to define the nature and limits of national government control over the local governments; to develop the organizational and economic mechanism for the strengthening of economic base and the providing of financial and managerial autonomy of administrative units.

The reform of territorial and administrative structure and spatial organization of power in Ukraine is one of the fundamental reforms, which affect almost all spheres of society. Thus its successful accomplishment requires broad public support. This, in turn, requires the frank and broad media exposure of reform process and problems. The

efforts of regional authorities at all levels should be aimed at the promoting of convergence. For this purpose it is necessary to develop the science-based innovation strategy for the restructuring of regional economy; to provide the broader support for development of business environment; to promote the consulting, education, research and technological development; to provide for the concessional loans to industrial enterprises and organizations conducting research and development; to involve the government orders mainly in the form of contracts for R&D and production of new innovative products; to promote the development of international leasing, joint venture, venture capital; to ensure priority allocation of investment, financial and credit resources for creation of new jobs in information-intensive industry sectors; to use more efficiently the existing scientific potential by means of reducing gaps of interdisciplinary connections in cycle «fundamental research– development– commercialization of knowledge in production»; to create the national database to monitor the development of research and innovation process in every region of Ukraine.

Currently, there are no adopted framework regulations concerning new model of territorial and administrative structure of Ukraine. It is necessary to adopt law «On territorial and administrative structure», which will define stages of reform, objectives and criteria of evaluation at every stage; specific provisions and clear requirements for the formation of territorial and administrative units on each level. It has to suggest the optimal model, which will combine power of central government, on the one hand, and on the other, will contribute to the development of democratic governance by strengthening the role of local self-government. Model of territorial and administrative reform At different stages of historical development the territorial and administrative system of Ukraine has undergone significant changes.

In early 20th century country was divided between Russian and Austro-Hungarian Empire. In Russian Empire Ukrainian ethnic territory consisted of 9 governorates divided into 90 counties. As part of the Austro-Hungarian Empire there were such Ukrainian lands as Galicia, Bukovina, and Transcarpathian Ruthenia with corresponding division into counties. After the collapse of both empires in the beginning of 20th century Soviet Ukraine was divided into circuits and districts, and later division was changed to regions (oblasts) and districts. In 1962 there was an attempt to unite oblasts into seven economic zones (councils of

national economy) – Donetsk, Kyiv, Lviv, Dnipro, Kharkiv, Black sea, but later they switched to the division into regions (oblasts) and districts.

This division has remained until now. The new model of territorial and administrative division should be based on the spatial paradigm providing for the metropolitan spatial economic systems drawing on the existing settlement systems, which have been transforming under the influence of processes of economic zoning and metropolisation. The economic zoning should rest on the consideration of historical, natural, ecological, social and economic characteristics of Ukrainian territory.

European integration processes taking place in Ukraine afford ground for the conducting of territorial and administrative reform in accordance with the EU common system of classification of territorial and administrative units for statistics – NUTS (Nomenclature of Territorial Units for Statistics: NUTS I (3 million of people – 7 million of people), NUTS II (800 thousand of people – 3 million of people), NUTS III (159 thousand of people – 800 thousand of people).

The implementation of NUTS in Ukraine may be considered as one of most important steps towards enabling Ukraine's joining the single European Statistical System, that will provide a unified, transparent and effective monitoring and as a result the implementation of effective regional policy. I argue that the reformation of existing Ukrainian territorial structure envisages the creation of first-degree units – NUTS III communities (a group of villages, settlements, towns); NUTS II – counties that will cover several modern administrative districts. The third level will be presented by economic areas that be created by combining existing regions in accordance with the level of NUTS 1. Taking into account experience of CEE countries, where under European integration the territorial and administrative reform took place gradually in two stages, the territorial and administrative reform in Ukraine should be also conducted in two stages.

At first present stage, it is important to guarantee the reformation of basic level NUTS III, which should be formed by combining local communities (with a population of at least 5–6 thousand people in accordance with the recommendations of the World Bank). The formation of territorial communities should be based on existing regional settlement systems through the merger around a certain core (centers of economic development) of village, town and city councils in accordance with economic, social, demographic, historical, infrastructural, administrative and managerial, natural and geographical, mental features of their

territories, as well as the principle of territorial access to social, administrative and public services and proper economic fundamentals: property, appropriate property rights, natural and other resources, assets of local budgets, which should be sufficient for resolving local issues within their competence[3].

The greatest distance of settlements from the center of the community is determined, as a rule, by basic requirements of social services at this level, especially by timing: emergency aid (15–20 min), delivery of secondary school students by school bus (15–20 min), emergency rescue (15 min). Regional public authorities have to develop systems of local communities. At the end of 2015, most regions of Ukraine approved long-term plans of territorial communities reforming, but their implementation requires a proper institutional and methodical support. Still the regulatory acts about system of organization and legal, financial and economic mechanisms aimed at the establishment and development of territorial communities has not been adopted. Ukrainian experts have offered some methods[4].

For example, in Lviv region the Perspective plan of creation of 140 capable territorial communities was developed. For the stimulation of social and economic development it is expected to provide people with state financial support in the amount of three million hryvnias, and in addition, to transfer to the communities over 190 thousand hectares of land beyond their territories. Existing district level in Ukraine (150–800 thousand of people) does not meet the level of NUTS II (from 800 thousand to 3 million of people). It is necessary to unite areas on the basis of existing settlement systems and interrelationships, and to form appropriate territorial units of the second level – that is districts (powiets) with the corresponding amount of population.

Moreover, because of existing interdistrict connections in some regions the system may cover the administrative regions of adjacent regions that should be considered during the formation of NUTS I. Districts should deal with the matters that the community cannot solve themselves: protection of public order, disaster management, flood and fire control, maintenance of general hospitals, social assistance, unemployment, and construction of roads. Thus, as a result of the first

[3] Zakon Ukrayiny «Pro dobrovil'ne ob'yednannya terytorial'nykh hromad» [Elektronnyy resurs]. http://zakon4.rada.gov.ua

[4] Proekt metodyky formuvannya spromozhnykh terytorial'nykh hromad [Elektronnyy resurs]. http://www.minregion.gov.ua.

stage of reform, territorial and administrative division of Ukraine will consist of communities (NUTS III) and district (NUTS II). As an example I single out with help of gravitational model five districts in Lviv region – Lviv, Drogobych, Zolochiv, Brody, Chervonohrad – and five districts in Ternopil region – Ternopil, Chortkiv, Kremenets, Berezhany, Shuya. I agree with V. Kolosov that the current population of the highest level of territorial and administrative division of Ukraine – region (oblast) – corresponds by quantitative parameters to NUTS II level[5].

In this regard, at the second stage of territorial and administrative reform it is necessary to start formation of NUTS I by combining economic areas with regard to agglomeration-metropolitan method. The centers of selected economic areas should become large cities with million or more people, on basis of which metropolitan spatial economic systems would be formed. Those systems are the foundation of national economy, sources of new ideas, technologies and innovations, generators, stimulants of economic growth. The economic zoning involves the division of national economy into relatively independent systems, each of which differs by appropriate level of public, economic, social integrity and independence. The economic areas may be considered as the concentration of historical, economic, political and social processes in a specific cultural environment, as part of the spatial structure of society.

The economic areas might become businesses-structures which «are able to adapt to the global economy and produce wealth», in other words, it should be optimal space to get the best social and economic results. Studying of national economic space zoning involves two interrelated approaches: qualitative (system) and quantitative (cybernetic). The goal of economic zoning should be the realization of strategy of increasing competitiveness of national economy based on sustainable long-term spatial social and economic development. The maintenance of regional transport infrastructure, specialized health care and specialized secondary education, development of culture, sports, tourism, providing a higher level of service (higher education, health care, cultural institutions) is proposed to transfer to NUTS I level.

The economic area level should also include the development and implementation of social and economic development policy and resolving of issues of inter-regional and national importance: the creating of conditions for economic development; the balancing of labor market; the

[5] Kolosov V. Territorial units in Russia,Ukraine, Belarus and Moldova and NUTS classification. V. Kolosov. [Elektronnyy resurs]. http://www.ums-riate.fr/Webriate/wp-content/uploads/2015/03/M4D.pdf.

implementation of projects to support small and medium-sized enterprises; advertising; the initiation of appropriate organizational forms to attract investment and international financial assistance (agencies, foundations of regional development); the organization of inter-regional cooperation, development and implementation of strategies and programs for regional development; the maintenance and development of regional social and technical infrastructure to support the science education, and culture (theaters, philharmonic, museums); the sustainable use of natural resources and preservation of the environment; the maintenance of emergency medical care facilities, specialized medical care and rehabilitation, diagnosis, as well as specialized schools. During first years of independence (1990–1996) Ukrainian scientists have proposed various options for integrated economic zoning. Authors proposed to single out from ten to six economic regions in Ukraine. The main principles of their allocation were: social and historical features; commensurable levels of industrial development, scientific and technological and cultural potentials.

2. The system of providing new administrative services in Ukraine

The priority in the sphere of provision of administrative procedures and adminis-trative services is adoption of the law on the general administrative procedure in accordance with the European standards, and gradual harmonization of individual administrative services with the identified general principles. Implementation of the general administrative procedure should be based on the principles of legality, a right to effective protection, provision of a decision clearly stating the grounds for adoption thereof, a right to non-judicial appeal, a right to appeal in court, etc. To ensure implementation of a decision of the Coordination Council on Public Administration, the Ministry of Justice created a working group on drafting a law on administrative procedure for defining the basic principles and rules of adminis-trative procedure.

This will facilitate legal clarity and provision of guarantees of respect for the rights of citizens and legal entities in cases when state agencies determine their rights and responsibili-ties. It is planned to prepare and adopt the draft law On Administrative Procedure in the current year. For improving the quality of provision of administrative services for citizens and economic actors in accordance with the European requirements, decreasing corruption risks during provisions of administrative services,

and increasing investment attractiveness and competi-tiveness of the country, the Cabinet of Ministers approved the action plan for implementation of the Concept on devel-opment of the system of provision of e-services. The administrator of the unified state portal of administrative services is the State Research and Development Institute of Informatization and Economic Modeling falling under the sphere of management of the Ministry of Economic Development[6].

The Institute will be responsible for tech-nical administration, development and proper functioning, integration of state authorities and local self-government bodies into the Portal of information systems.For 2018, it is planned integrate the systems of electronic interaction of executive bodies with the Portal and to build a comprehensive system for protection of respective information. Completion of these activities will significantly increase the number of administrative services provided in an electronic form according to the one-stop-shop principle, and it will decrease the time necessary for submission of documents required for receiving an administrative service, and it will furthermore ensure protection of information on the Portal in accordance with the legislation.

The quality and accessibility of adminis-trative services was growing also due to the centers for provision of administrative services and decentralization of basic administrative services. Special attention was paid to further development of the centers for provision of administrative services, and to increasing the number of administrative services provided by such centers as well as increasing the quality of provision thereof.

In 2017, 64 new CPAS were opened – from 682 in 2016 to 746 as of the end of 2017. In the united territorial communities, 71 CPAS are already functioning, and in 2017 their number increased by 50.A list of services provided by the CPAS increased – on average, from 84 in 2016 to 95 services in 2017. Pursuant to the CMU executive order a list of CEB services to be provided by CPAS was increased to 136.In 2017, CPAS provided 11 million services, which is 33% more than in 2016 (8.3 million services). On average, every day all Centers provide more than 40 000 services to individuals and legal entities.The existing network of the Centers was analyzed, the results of which identified 240 “blank spaces”, and network optimi-zation was suggested. The plan forensuring 30-minute accessibility was suggested.Standards of quality of provision of

[6] Transformation of international economic relations: modern challenges, risks, opportunities and prospects: collective monograph. edited by M. Bezpartochnyi, in 3 Vol. ISMA University. Riga: «Landmark» SIA, 2017. Vol. 3. P. 101

servic-es to CPAS visitors were developed, and CPAS administrators were informed about them during 14 specialized training sessions. To ensure implementation of these standards in practice, a respective online course was developed, which is available on the Open University of Maidan (VUM)* platform. As of January 9, 2018 the course was completed by 821 persons, and as of March 12, 2018 – by 1 683 persons[7].

In order to improve the CPAS work, the system for evaluation of performance of centers for provision of administrative services was introduced, which is used for ongoing monitoring of their activities, and the results are posted on the official web-site of the Ministry of Economic Development on a quarterly basis. Based on the analysis of monitoring results, proposals are forwarded to the Cabinet of Ministers and to central executive bodies. Among other things, these proposals may refer to improving performance of the centers for provision of administrative services (forwarded to oblast state admin-istrations and local self-government bodies), and issues pertaining to ensuring interaction of CEBs with the canters for provision of administrative services. Proposals were submitted for respective draft normative legal acts. Seminars and round tables were conduct-ed with participation of CPAS staff and the public for discussing the quality of services and searching the ways to improve them.

The Law of Ukraine on Fiduciary Services was approved, and a draft normative legal act was prepared on identifying the mechanism of electronic identification of citizens for receiving administrative services in an electronic form, including through the mobile ID.

In order to decrease the administrative pressure and to optimize the procedure for provision of electronic administrative services, the Government identified 15 most popular services (re-engineering), and prepared a plan for theiroptimization.

Analytical study was conducted to explore the situation, problems and prospects of developing 23 highest priority state elec-tronic information resources for imple-menting electronic interaction, and a roadmap was prepared for developing national inter-operability.Procurements were organized and a respective contract was signed for the System of Electronic Interaction of State Electronic

[7] Report On The Investigation Into Russian Interference In The 2016 Presidential Election. Volume I of II. Special Counsel Robert S. Mueller, III. Submitted Pursuant to 28 C.F.R. § 600.8(c). Washington, D.C. March 2019. [Elektronnyy resurs]. https://www.nytimes.com/interactive/2019/04/18/us/ politics/mueller-report-document.html.

Information Resources (herein-after – SEI SEIR) Trembita. The system is development within the framework of the the EGOV4UKRAINE project that provided support to the program of decentraliza-tion in Ukraine EGOV4UKRAINE with financing from the European Union, and with support of cooperation development framework of Sweden and Estonia.

As of today, the feature set for the soft-ware maintaining the SEI SEIR infrastruc-ture was developed and tested, industrial, test, and training environment of the SEI SEIR was installed on the servers of the State Agency for E-Governance, and work was started to connect the basic state registers to the SEI SEIR. In 2017, it 28 700 000 hryvnias were allocated from the State Budget for financing development, administration and maintenance offunctioning of the system of electronicinteraction of the state electronicinformation resources.

The Government created a uniform state open data web-portal, data.gov.ua. The portal provides access to public informa-tion in the form of open data and envisag-es access to information for state authori-ties for its further use. During the period of existence, more than 27 480 data sets were posted on the unified state open data portal, and more than 2 000 manag-ers of such sets were registered. In 2016, more than 11 000 open data sets were registered, and more than 800 managers of information were registered; in 2017, more than 16 000 open data sets were registered, and more than 1 200 new managers of information were registered[8].

On December 20, 2017 the Cabinet of Ministers adopted a resolution on amend-ing the Provisions on data sets subject to publication in the form of open data (79). This document will make it possible to increase the number of data sets for publication from 300 to 616.

Conducted activities include:

two assessments of the status of publication and update of the data sets in the uniform state open data porta;

a national competition of innova-tions and self-sufficient IT-projects and solutions based on the Open Data Chal-lenge in order to provide a possibility for developers, entrepreneurs, designers and public activists to use open data for devel-oping services and provides that will facili-tate solving problems of the Ukrainian society.

The winners of the competitions were the Open Coal Market project – an online auction for selling coal, the Court on a Palm – an analytical

[8] 6. Transformation of international economic relations: modern challenges, risks, opportunities and prospects: collective monograph. edited by M. Bezpartochnyi, in 3 Vol. ISMA University. Riga: «Landmark» SIA, 2017. Vol. 3. P. 115.

instrument for searching, studying and visualizing court decisions, and ШТрафи.UA [Fines.UA] – a mobile tracking technology that offers a possibility to determine the quality of driving using telemetric features of a smartphone. The winners received finan-cial prizes totaling 600, 500 and 400 thou-sand hryvnias.

Based on the results of the Open Data Leader contest, the most progressive leaders were determined in the open data sphere among state institutions, civil soci-ety organizations and businesses in six categories:

Open Data Business Award (for the most efficient use of open data for trans-forming business) – Open Data Bot service – monitoring registration data of Ukrainian companies and the court regis-ter for protection from illegal takeovers and control of contract partners;

Open Data Government Award (for the highest standards of publication of open data by central management bodies) – Ministry of Justice;

Open Data City Award (for the high-est standards of publication of open data by local management bodies) – Lviv City Council. The Breakthrough of the Year – Dnipro City Council;

Open Data Social Impact Award(for the largest social impact of the use of open data) – the Better Regulation Deliv-ery Office, BRDO – a non-governmental structure crated for accelerating the reform process in Ukraine;

Open Data Leader Award (for the best personal merits in open data devel-opment) – Andrii Hazin, a journalist and analyst of Texty.org.ua;

Open Data Media Award (for the best use of open data in journalism) – Kantselarska Sotnia– an organization dealing with decryption and digitalization of declarations of officials, council members, law enforcement officers, and other civil servants.

Implementation Challenges and Risks:

– Absence of a uniform consolidated resource in Ukraine that would contain information about all state registers (135 state registers in more than 40 state authorities);

– Imperfect legislation regulating general principles of creation and mainte-nance of state registers, which results in a large number of heterogeneous state resources not designed for electronic interaction;

– Difficulty with developing a one-stop-shop system for e-services. Indi-vidual services are developed through individual departmental systems and local self-government bodies

– Absence of methodology and procedure for evaluation of provision of administrative services that makes it impossible to assess objectively the quali-ty of provision of administrative services in the CPAS and e-services.

3. Novelties of Public Administration in Ukraine

20 Deliverables by 2020, a joint Eastern Partnership working document, says that the member-states should improve the quality of governance by strengthening institutions and implementing proper governance practices. When Ukraine adopted the Public Administration Reform Strategy in 2016, it declared commitment to the Principles of Public Administration developed by SIGMA (Support for Improvement in Governance and Management). The EU provides sectoral budget support to Ukraine for implementing a comprehensive public administration reform.

SIGMA's Principles of Public Administration cover six core areas: the strategic framework for public administration reform; policy development and coordination; public service and human resource management; accountability; service delivery, and public financial management.In a nutshell, this is the EU's model for relatively good governance. Since 2015, SIGMA has done a comprehensive assessment of the extent to which public administration complies with these Principles in seven candidates and potential candidates for joining the EU, as well as in Moldova, Georgia and Ukraine. The results of this assessment define the starting point for work towards the goal of improving public administration and for the roadmap of reforms[9].

The assessment of Ukraine was conducted upon request from its government using the methodology applied to the candidates for EU membership. The criteria are harsher than those used for the European Neighborhood Policy (ENP) countries.

The response of different government institutions and expert groups to the findings varied. SIGMA found that "overall, Ukraine has already made considerable progress in reforming some areas of its public administration". In September 2018, the EU decided to issue another tranche of sectoral budget support to it. Ukraine received 3 or more points out of 5 in half of all the criteria. At the same time, little has been done on

[9] Public administration reform in Ukraine: A review of accomplishments. Natalia Kupriy, Central Ukrainian Foundation for Development Support (Kyiv, Ukraine). [Elektronnyy resurs]. http://prismua.org/en/pdf/2019-02-8.

nearly 20% of the criteria. According to the EU experts, Ukraine's indicators are overall better than those of Western Balkan candidates and potential candidates for EU membership that have long been in the process of reforms, and still better than of those countries in the "civil service" segment.

Ukraine's Cabinet of Ministers took into account the findings of the assessment and used them as the basis for updating the Public Administration Reform Strategy in December 2018.

What specific results of the reform effort are visible by now? First of all, Ukraine's ranking in a number of indices points to some progress in this key reform. It went 34 points up to position 65 in Transparency of Government Policymaking in the 2018 Global Competitiveness Index by the World Economic Forum. Also, it improved its position by 23 points to rank 31st in the Open Data Index.

Ministries are undergoing restructuring, with the respective procedures for analysis and government policymaking integrated into their work. Ten pilot ministries and the Secretariat of the Cabinet of Ministers have introduced new apparatus structures.

Among other things, general policy directorates and directorates for strategic planning and European integration were established. This allows the ministries to gradually shed excessive functions of public property administration and administrative service provision, and of the routine "administration of the national economy", a standard function of the old-school administration. Starting from 2018, impact outlook will be a mandatory element of decision making in the government. This means defining target groups and the impact these decisions will have on them in the short and long term .

1,300 posts of reform specialists were introduced in the government bodies, with almost half of them already filled through open, transparent competitions with nearly 19,000 applicants. A special procedure for the selection of reformers allowed the government to hire people experienced in civil service and external specialists with respective competency and experience in business and non-government sector. The new general directorates are staffed with graduates of some top international European and American universities, and specialists with experience in think tanks and investment companies, well-known NGOs and projects, including

Tabletochki foundation, National Anti-Corruption Platform, Factcheck-Ukraine project and more[10].

When the new law on civil service came into effect in 2016, it essentially made a huge step towards the creation of professional, stable and politically neutral civil service. The institute of state secretaries was introduced in the ministries. Currently, new people are hired and promoted in civil service through competition exclusively. Replacements in the top echelons of civil service are based on a competition held by the designated Commission for the Top Segment of Civil Service. 60% of the Commission members represent civil society, including trade unions and employers' associations. What is more, since 2018 there has been a stricter requirement for contenders for the top segment of civil service to have the A2+ command of a foreign language, English or French, proven by the respective tests.

The new philosophy of civil service requires new approaches to personnel management. For this purpose, HRM departments have been introduced in all government bodies, replacing the current "staff management units" whose only function was to keep records on human resources. In 2019, Ukraine plans to launch the HRMIS staff management information system with the functions of hiring staff for civil service and keeping record of it, assessing professional activity, organizing professional learning and tracking salary progress.

2018 saw the first full cycle of assessing civil servants' work based on Key Performance Indicators (KPIs). The results serve as a basis for individual programs of personal development for civil servants, as they focus on identifying the competencies to be developed further and the education programs to be used for that purpose on a yearly basis.

The reform of civil servant salary system was launched. Starting from 2019, a solid system is in place whereby 70% of the salary is a permanent component tied to subsistence minimum and 30% is the variable bonus component. This approach allows employers to minimize the subjective factor and bias in remunerating for civil service. According to The Reform of Remuneration for Civil Servants, a study by the independent Center for Economic Strategy, Ukraine has competitive wages for civil servants on the local level, while the wages for civil servants in central authorities are still below the ones in the private sector.

[10] Anticorruption in Ukraine: Unbiased Overview. [Elektronnyy resurs]. https://voxukraine.org/en/anticorruption-in-ukraine-en.

The system of administrative services is a special priority. It is an essential component of proper public administration that defines how taxpayers experience its quality. At the end of 2018, the Cabinet of Ministers approved the Law of Ukraine On Administrative Procedure and submitted it to the Parliament. This framework law defines an essentially new policy for administrative service provision.

The Single Portal for Administrative Services was launched allowing citizens to receive many administrative services electronically,which minimizes corruption and speeds up the service. International technical assistance has helped Ukraine expand the network of one-stop-shop or front-office Administrative Service Centers (ASCs). By 2018, 775 ASCs were in operation and have provided 11 million services so far. Individuals and legal entities get an average of over 40,000 services through all ASCs daily[11].

Based on the government decision, the Single State Open Data Portal works at www.data.gov.ua. It has published over 27,500 data sets and registered over 2,000 data set administrators.

All these accomplishments do not overshadow challenges in the public administration reform. Moreover, criticism will get more prominent as Ukraine walks further into the political turbulence over the 2019 presidential and parliamentary elections. All transformations, especially in public service, are not yet stable enough, which remains the key challenge. If the government changes after the parliamentary election, they will have to stand the test of the change. Late 2019 will show the extent to which public administration is resilient to political influence, especially on staffing the top offices, managing the system of salaries, and continuing reformist positions in ministries. Another worrying factor is financial unsustainability of the reform implementation.

Noteworthy is some perfectly obvious internal resistance to reforms. A good illustration to this will be the intensified efforts of the newly-elected Audit Chamber to undermine many reformist programs and projects through audits that often provide controversial findings.

Undoubtedly, the system of strategic planning, administrative procedure and government policymaking procedure are still far from being fully operational.

The next steps on the crucial public administration reform should be more decisive. Hopefully, Ukraine will manage to navigate through the

[11] Anticorruption in Ukraine: Unbiased Overview. [Elektronnyy resurs]. https://voxukraine.org/en/anticorruption-in-ukraine-en.

election turbulence and deliver the expected results in 2020. The reform can not last forever. If protracted too long, it risks drowning itself without delivering the expected result.

CONCLUSIONS

Account current scientific approaches to economic zoning the most optimal will be the allocation of six integrated social and economic regions: Central (Vinnytsya, Zhytomyr, Kyiv, Khmelnytsky, Cherkasy, Chernihiv regions), Eastern (Donetsk, Luhansk regions), Western (Volyn, Transcarpathian, Ivano-Frankivsk, Lviv, Rivne, Ternopil, Chernivtsi region), EastCentral (Dnipropetrovs'k, Zaporizhia regions), Southern (Mykolaiv, Odesa, Kherson regions and Autonomous Republic of Crimea), Northeastern (Poltava, Sumy, Kharkiv region), with corresponding centers Kyiv, Donetsk, Lviv, Dnipropetrovsk, Odesa, Kharkiv. For the development of proposals for the improving of legal regulation of regional development and local self-government reformation in Ukraine the Ukrainian-Polish advisory group was created by the signing of the Memorandum of Cooperation about the support of local government reform in Ukraine on December 17, 2014 in Warsaw.

The Ukrainian-Polish advisory group plans to assess the implementation of existing decisions on financial decentralization; prepare the proposals regarding amendments to the Budget and Tax Code of Ukraine in terms of financial decentralization; strengthen the financial basis of local self-government considering the budgetary performance; work out the mechanisms to ensure public and state control of public finances.

The basic plan to reduce the risks of providing administrative services is: continued work on the project for implementation of the basic principles and rules of administrative procedure in accordance with the European standards; implementation of the electronic interaction system TREMBITA, and connection of minimum 20 basicregisters to e-interaction**; i**ntroduction of an integrated system of electronic identification with the help of all e-ID means – digital signa-ture, BankID, MobileID, ID-card in one servise; introduction of more than 20 new priority electronic administrative services, namely permits for transportation; vehicle registration, childbirth registration, etc; increase of the number of recipi-ents of electronic administrative services online to 30%; increase of the list of CEB services that are provided through the centers for provision of administrative services to 136; ensuring

implementation of the plan of accessibility of administrative services through the increase of a number of CPAS, geographic coverage and better functioning; introduction of re-engineering for 15 most popular services. Development and adoption of the procedure for provi-sion of administrative services built around citizens' needs (citizen-centric policy); introduction of the principle of one entry of data, definition of terminology for basic notions of the system of elec-tronic interaction, its objects and subjects, modernization of the National Register of Electronic Information Resources; development of the uniform state open data web-portal that will make it possible to process data set formats in an automatic mode that are uploaded to the portal for avoiding uploading erroneous formats.

SUMMARY

The complexity of the tasks of public administration is that the changes in the Ukrainian government structures observed in recent decades have failed to overcome the cumbersome, non-transparent administrative-command system, to create an effective public administration. Unfortunately, the research on public administration pays little attention to anti-crisis technologies; not sufficiently developed and justified in both global and domestic practice are the mechanisms for implementing the objectives of public management in crisis conditions, methods and procedures of their bodies' activities. So, today's crisis of Ukrainian politics is above all a crisis of confidence. People have lost confidence in political institutions, in the virtue of leading politicians and parties, institutional capacity of the government and its leaders to implement reforms in democratic direction that was won and clearly proclaimed by the Revolution of dignity. In turn, politicians do not trust either each other or the society and no longer rely on the support from citizens. This makes governmental institutions unable to purposefully lead the country through reforms. Therefore, the definition of strategic and perspective directions of public administration reform according to the best European and world standards provides a comprehensive approach in the coordinate system of modern Ukraine and demands socially equitable governance that would ensure harmonization of public interests and the interests of society the most effectively. This is possible thanks to the improvement of the system of public administration and balancing the interests of all members of society. The material used in the study has only the analysis of information resources.

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Information about the author:
Bortnyak K. V.
Candidate of Law Sciences, Assistant Professor,
Assistant Professor at the Department of Constitutional
and International Law
of the Educational and Humanitarian Institute
of the V. I. Vernadsky Taurida National University
33, Ivan Kudria str., Kyiv, Ukraine

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THE EFFECTIVENESS OF REALIZING THE STATE POLICY IN THE FIELD OF THE CORRUPTION PREVENTION IN UKRAINE

Busol O. Yu.

INTRODUCTION

In 2015-2016, several specialized anti-corruption agencies were created – the National Anti-Corruption Bureau of Ukraine (NACB) and the Specialized Anti-Corruption Prosecutor's Office (SACPO) – as an independent structural unit in the structure of the General Prosecutor's Office, as well as the State Bureau of Investigations (SBI) and the National Agency for the Prevention of Corruption (NAPC), and others.

The creation, staff assistance and the first steps to new institutions took place in a harsh political struggle and active opposition from the representatives of the political elite, law enforcement agencies and the judiciary corpus, interested in maintaining the status quo. As practice shows, the activity of newly-formed agencies does not comply with the public request. This is due to functional weaknesses of the specialized anti-corruption institutions and the failure to reform the judiciary system, and, as a result, in a number of cases the direct opposition of the judges[1].

What separates corruption crimes from others is their high latency, which complicates the provision of their criminological characteristics. According to scientific research only 1-5% of corruption crimes get to be investigated by the law enforcement agencies. The rest remains latent, and the perpetrators remain unpunished, as they are not being prosecuted and can freely continue their criminal activity[2]. Thus, official data on the state of corruption does not reflect its actual state; it only shows us the activity of law enforcement agencies against such crimes. In addition, it is usually small officials that are brought to the liability. Meanwhile, transnational criminal groups take part in the bribery of politicians who can influence economic processes in the state in the direction that their customers want.

[1] Україна проти корупції: Економічний фронт. Економічна оцінка антикорупційних заходів у 2014–2018 рр. Дніпро: Середняк Т. К., 2018. 85 с.

[2] Кондратов Д.Ю. Вісник кримінологічної асоціації. 2018. № 2 (19). С.132

1. The State of Prevention and Counteraction of Corruption in Ukraine

One of the methods for collecting comparative data is sociological research. So, for our analysis it is necessary to take account of the experience and opinions of those who directly encounter corruption – Ukrainian citizens. Corruption Perception Index (CPI) is an indicator that has been calculated by the international organization Transparency International since 1995. Ukraine somewhat improved its performance in 2018. Its result is 32 points and 120th place among 180 countries. Thus, Ukraine gained 2 more points and climbed to 10th place (In 2017 its result was 30 points, 130th place. If we compare the results between the neighboring states, Ukraine is only higher then the Russian Federation (28 points, 138th place), while the rest is ranked higher: Poland – 60, Slovakia – 50, Romania – 47, Hungary – 46, Belarus -44, Moldova – 33 points[3]. The growth of Ukraine's performance was due to the assessment of the business situation. This is what the analysis of the research shows, based on which the index was calculated. Positive impact was made by the introduction of automatic refund of value-added tax, and the expansion of functions of the system ProZorro.

According to the Ukrainian-Wide Network of good faith and justice and the Compliance Network UNIC "Corruption in Ukraine – a Business View", of 305 enterprise executives and their deputies, 54% of respondents indicated that corruption and malicious behavior for deputy's was "really common". Courts were also included in the Top 5 of the most corrupted agencies and spheres: 43% of the responders mentioned that corruption is '"really common"' for them. 39% of the responders consider fiscal service employees as corrupt, 31% thinks that the Ministry of Ukraine is corrupt; also 31% think that «big business» is corrupted. UNIC experts come to a conclusion that «big business» is one way or another attached to the state authorities, or so-called influential people.

The results of the poll which was held by the «Democratic initiatives»[4] Foundation shows that 91% of the citizens consider

[3] Індекс сприйняття корупції – 2018. URL: https://ti-ukraine.org/research/indeks-spryjnyattya-koruptsiyi-2018/.

[4] Опитування проводилося з 16 по 22 серпня 2018 р. в усіх регіонах України за винятком АР Крим та окупованих територій Донецької та Луганської областей. Загалом було опитано 2019 респондентів віком від 18 років. Теоретична похибка вибірки не перевищує 2,3%. Для порівняння соціологи наводили дані загальнонаціонального опитування населення України, проведеного з 18 вересня по 3 жовтня 2017 року Фондом «Демократичні ініціативи» імені Ілька Кучеріва та фірмою «Юкрейніан соціолоджі сервіс».

corruption as a serious problem in Ukraine and 61% of the citizens are convinced that this is the most serious problem that prevents the development of our state. That is why the awareness of corruption has grown drastically over the last year. Nowadays, 61% of those asked are convinced that the lack of progress in fighting corruption lies in the fact that those who fight corruption are also corrupted.

Comparing with 2017 data we could see people's distrust in the fact that authorities could overcome corruption only grew over time – it went from 53% to 61%. It also shows that that 38% of the responders think that corruption is a part of our people's mentality, and 46% think that it's not. The younger the responder's age was, more of them called corruption as a part of the mentality of Ukrainians. (However that is not 100% correct according to the research). Sociologists have mentioned that the same question was raised in 2001. First of all, 55% – Ukrainians support punitive methods of overcoming corruption, and 28% of them think that we could overcome corruption by eliminating corruption risks. Supporters of eliminating corruption '"through education" are in a minority – there are only 12% of them.

The attention should be drawn to Ukraine's citizen's extremely negative perception of measures taken by the government of Ukraine to prevent corruption. Thus, according to the poll conducted by the ZIK television channel, which ended on February 28th, 2018, answering to the question of «What is the best way to rate the state of fighting corruption in Ukraine?», 91% of the responders indicated that the process has not even started yet.

Transparency International gave Ukraine the following recommendations in 2018 to help in overcoming corruption in the state: Anti-corruption court should start working and the anti-corruption reform should continue working; strengthen the opportunities of agencies in pre-court investigation and continue fighting corruption; restart NAZK; introduce new electronic state systems; deprive law enforcing agencies from interfering the economic activity. However, the recommendations mentioned above have not been realized yet.

According to Strategy of the National Security of Ukraine[5], one of the most relevant threats to Ukraine's national security is corruption and

[5] Про рішення Ради національної безпеки і оборони України від 6 травня 2015 року «Про Стратегію національної безпеки України». Указ Президента України від 26 трав. 2015. № 287. Офіційний вісник Президента України. 2015 р. № 13. ст. 50.

the ineffective system of public administration. The threats to Ukraine's national security are also factors that directly affect the state of corruption in the state, to be precise the economic crisis, the exhaustion of the financial resources of the state, and lowering living standards of the population.

On June 24, 2018, the Cabinet of Ministers of Ukraine approved the draft Law of Ukraine "Anticorruption Strategy for 2018-2020" (Reg. No. 8324), which is awaiting consideration by the Verkhovna Rada of Ukraine. However, according to the conclusion of the Main Scientific and Expert Department (No. 16/ 3-306/8324 (99392) dated May 11, 2018), the document is purely declarative.

A significant disadvantage that directly affects the effectiveness of countering corruption is that the project of this law has not been properly and adequately debated with the representatives of civil society and other stakeholders.

When evaluating the state of counteraction to corruption crimes, one should consider the effectiveness of the state agencies work that perform functions of preventing corruption. It should be mentioned that the State Bureau of Investigations does not have significant results in counteracting corruption because of its long-term process of creation, which is explained by the political processes around the department, in particular the conflict between the newly elected Director of the SBI R. Truba and the competition comity in the future, as well as the lack of unanimity and support of R. Truba from his deputies. SBI started its activity on November 28, 2018 – when the first criminal proceedings were registered. In the report about the activities of the SBI in 2018 on the site of the institution indicated a total of 5794 criminal proceedings, 4761 of them are investigated by the SBI, 510 – directed to the court, 523 – others, 610 suspicions and 499 of the conviction acts[6]. However, there are no indictments against TOP-high officials, who were suspected in committing corruption crimes. Moreover, the tendency is the escape of some officials from the prosecution abroad. One of the most notable achievements of the State Bureau of Investigations in 2019 is uncovering the scheme for the illegal import of premium cars into Ukraine through the Lviv Customs. In particular, investigators have revealed the crime of

[6] Звіт про діяльність Державного бюро розслідувань. URL: https://dbr.gov.ua/report/zvit-pro-diyalnist-derzhavnogo-byuro-rozsliduvan-za-2018-rik.

the illegal importing of Mercedes cars, which resulted in the state budget losing 658 thousand UAH.

As for consideration of the criminal proceedings by the National Anti-Corruption Bureau of Ukraine, as of December 31, 2018, this agency has the following results: sent to the court – 176; in the stage of consideration – 94; sentenced – 25.

In May of 2018, a joint proceeding with the task of revealing the fact of losing 695 million UAH by the PC «SkhidGZK» and the PC «NAEK EnergoAtom» was taken into the court. The information about this case was one of the first ones to be included into the United Register of Pre-Trial Investigations by the detectives of NABU which makes it unique from the involved high officials' perspective while also taking into the account the immensity of international cooperation. Such investigations and their referral to the court is proof of NABU's effective work. However, there are single proceedings, the consideration of which does not start more than 1 year:

From a positive perspective, one can mention the detention by the NABU detectives of the commercial director of the company-supplier of fuel for the needs of Ukraine's Ministry of Defense, who is suspected in stealing more than 149 million UAH on 09 July 2018. For nine month this person hid from the investigation – in November of 2017 he was declared internationally wanted. At the same time, while the suspect was crossing the state border in July 9, 2018, the employees of the State Border Guard Service of Ukraine (DPS) did not take measures to detain[7] him. Taking into the account the repeated occurrence of such cases at the state border of Ukraine (in a negative tendency) could indicate the presence of corruption in the actions of employees of Ukraine's DPS.

Nearly a half of a thousand requests for international legal assistance have been sent to the competent agencies by the National Anti-Corruption Bureau of Ukraine, because Ukrainian corruption has left marks in 65 states of the world. Usually detectives seek help from the law enforcement agencies in Latvia, Cyprus, the United Kingdom, Germany and Switzerland. NABU has also responded to inquires received from foreign colleagues – 90% of them were executed successfully[8].

[7] Звіт Національного антикорупційного бюро за 1 півріччя 2018 року. URL: https://nabu.gov.ua/sites/default/files/reports/zvit_10.08.2018_sayt.pdf.

[8] Там само.

This indicates the reorientation of the work of the anti-corruption agencies from local national corruption to transnational which is natural due to the globalization of the crime.

In general, NABU'S activity should be evaluated by counting the compensated amount of the state losses. Thus, as of 31th of December, 2018 452, 37 million UAH was compensated, and 193,39 millions of them was compensated in 2018. 193, 39 million compensated in criminal proceedings, in which pre-trial investigation is still in process, and 5, 68 millions compensated where it had already ended. The allocation of compensation in different field looks like this: energy – 87, 57 million UAH, others – 77,94 million UAH, transport and infrastructure – 25, 92 million UAH, social sphere – 7, 64 million UAH. 94 agreements and contracts are declared invalid (this decision became legally valid). The amount of money which they hope to be returned to the state enterprises due to NABU's lawsuits in agreements and contracts, which are declared invalid and the decision became legally valid is 4, 77 billion UAH.

As of December 31, 2018 an arrest applied to the money; 477, 72 million UAH, 157, 56 million USA dollars, 1, 14 million Euros, 10,88 thousand GBP. Another arrest is applied to property: residential property – 119 units, non-residential property – 101 units, corporate right and shares – 150 thousand, land parcels – 244 units, agricultural technology with its components – 288 units, non-residential property abroad – 2 objects, integral property complexes – 3 objects, transport vehicles – 81 units, computer technology – 26 units[9].

At the same time, "strengthening" of the National Anti-Corruption Bureau of Ukraine, just as Transparency International suggested, did not happen. NABU detectives did not receive rights to such an operational and technical measure as tapping the telephone. Instead, the changes to the legislation made it difficult to conduct expert examinations in criminal proceedings (the notorious "corrections by Lozoviy"). The National agency for the Prevention of Corruption (NAZK) in 2018 has made 471 protocols and issued 97 regulations for violating the law in the sphere of preventing the a conflict of interests, which increases the results of the agency in 2017 in almost three times. The vast majority of protocols on corruption-related administrative violations have been drawn up to in

[9] Міні-звіт про діяльність НАБУ. URL: https://www.flickr.com/photos/nab_ukr/sets/72157705076034601?fbclid=IwAR1iJg6dR6VfsqMacTQkGIu8RqaCc1y7An6lbxvrkHi-wGEbRb3KijYM_eY.

violation of requirements to prevent and resolve conflict of interest, to be exact the failure to inform the person about having a real conflict of interest and taking action or making decisions under the conditions of a real conflict of interest situation. Also, in 2018, the NAZK filed only 5 lawsuits against the Kyiv Regional Administrative Court about declaring self-government bodies acts invalid, acts which were approved in a result of breaking the anti-corruption legislation. During 2018, 949 clarifications were given to specify if the conflict of interest actually took place or not and also an action plan for its settlement. According to the results of NAZK in 2018: more than 11 thousand requests by the special inspectors have been processed; processed 2207 messages of accusers; 472 decisions about conducting inspections on declarations the have been approved; criminal proceeding have been initiated on 4 political parties based on NAZK materials. For conducting a pre-trial investigation the National Organization of the Prevention of Corruption sent 253 justified conclusions regarding the detection of signs of criminal offenses to the law enforcement agencies, which were sent to: NABU – 37, to the National Police of Ukraine – 178, and 38 of them were sent to the prosecutor's office[10]. The small numbers given are not representative, because it is impossible to identify trends without criteria that would help rate the work of the administration. The announced automatic check of electronic declarations is pretty much pointless, because NAZK did not receive permission to access some state register. In the end the NAZK did not become the technical administrator of electronic declarations. And the tender for the audit of its activities was conducted while violating the law. Since its inception to June 2018 NAZK reviewed only 331 declarations from more than 1 million submitted. In 45 of them NAZK detected discrepancies, this means undeclared property. According to the estimates of the Reanimation package of reforms, if the declarations are going to be reviewed at that pace, then NAZK will review all officials approximately in 3600 years[11]. It can be confirmed that the National agency of the Prevention of Corruption, as of April 2019 has never met the strategic goal of reviewing the declarations of TOP-level officials, which doubts

[10] Результати перевірок. Національне агентство з питань запобігання корупції. URL: https://nazk.gov.ua/rezultaty-perevirok.

[11] З такими темпами НАЗК перевірить всі декларації не раніше, ніж через 3600 років, – експерти. URL: https://rpr.org.ua/news/z-takymy-tempamy-nazk-pereviryt-vsi-deklaratsiji-ne-ranishe-nizh-cherez-3600-rokiv-eksperty/.

the reasonability of the agencies functionality in Ukraine as an agency, which effectively prevents corruption crimes.

In 2017, according to the provisions of the State Program of realization of grounds of the state's anti-corruption policy in 2015-2017 years, a detailed review should implement every year. But it has not been implemented, and there is absolutely no changes added to the program.

The Draft Law of Ukraine "On the Anti-Corruption strategy in 2018-2020 years" had been under consideration by the Government for a long time and only in April of 2018 it got registered in Verkhovna Rada of Ukraine because the new Anti-Corruption strategy is still without consideration, the State program for resolving the problem of the grounds for state anti-corruption politics has not been developed yet.

NAZK's activity became a disappointment for the society as an institution, while also directly affecting the formation and implementation of the state anti-corruption politics. Despite the given legal guarantees of the independence of NAZK, this state agency is directly affected by some political influences, so in practice it is not really independent. Conflicts with the Cabinet of Ministers and the Ministry of Justice of Ukraine have only made the state of NAZK at the stage of institutional formation more complicated. Over the entire period of work of the Specialized Anti-Corruption Prosecutors Office and NABU, 106 criminal proceedings have been opened about the topic of illegal enrichment, 37 of which have been already closed and only 4 of them are sent to court with accusative acts. At the same time it should be mentioned that the statistical data about criminal proceedings which is given on the General Prosecutor's Office (GPO) website does not include the division of these categories of individuals, defined in the part 1, Art. 3 of the Law «On the Prevention of Corruption» that complicates the analysis.

In the last five years the GPO has been associated with scandals, which are still unresolved. The candidature of Y. Lutsenko, who had no legal education, became the first reason for the scandal of the political society and civil society. The most impactful incident was the case of tapping the director of SAP N. Holodnitsky, when NABU detectives hid a tapping machine in an aquarium in his cabinet. N. Holodnitsky's conversations with the subjects of criminal proceedings and other individuals became the reason for opened the disciplinary and criminal

proceedings for him and a significant decrease in his authority in SAP[12]. In 2018 the conflict became NABU and SAP reached its peak. As time went by the conflicts between NABU and the anti-corruption prosecutor's, who control the investigations with NABU detectives became public. At the same time, the mass media are writing articles about the visible conflict between the president's team and the minister of internal matters.

A separate consideration is needed to be attracted to the problem of non-transparent tenders for the positions of the state's officials of categories A and B. Due to mass media, the society had the opportunity to observe the information and make sure that the actions of the chairman and other members of the Selection Committee of members NAZK (hereinafter referred to as the Commission) did not meet the standards of professionalism, impartiality and integrity, which directly negatively affected the work of such an important anti-corruption agency as NAZK. However, despite the numerous scandals, which were associated with the Commissions work during 2015-2016 years, the Government did not see any need to replace the Chairman and the replacement of its members. Society has the same question to the people who were elected by tenders to the National Agency of Ukraine which specifies in detecting, tracing and managing assets, which were obtained from corruption and the other crimes, and also the State Bureau of Investigations. These are serious violations during the conduction of tenders, and an explicit lobbying of these candidates by certain political forces.

Recently, there has been a high public resonance about the cancelation of criminal responsibility for illegal enrichment, which was approved in 2015, which was one of the European Union requirements for the plan of non-visa travel, and also one of Ukraine's responsibilities in front of IMF. The National Anti-Corruption Bureau has investigated 50 criminal proceedings under the article 368-2. However on December 12, 2017, 59 national deputies appealed to the Constitutional Court of Ukraine and 24 of them have previously voted for the approval of the article 368-2 of the Criminal Code of Ukraine in its current version. As a result, on February 26, 2019, the Constitutional Court of Ukraine declared the previously mentioned article unconstitutional in the Criminal

[12] Романюк Р. Шпигунські ігри, або «Жучки» в кабінеті Холодницького. Українська правда. 21 березня 2018 р. URL: https://www.pravda.com.ua/articles/2018/03/21/7175296/.

Code of Ukraine. Moreover, almost 30 national deputies from different factions could have been involved in criminal investigations about illegal enrichment. Considering the high public resonance, we believe that we should continue the investigations about the individuals mentioned before by other legal means.

Regarding the anti-corruption measures taken by the Ministry of Health Of Ukraine, according to the journalist's investigations from the 24th Channel, after the reform of health-care started, the companies through which MHU made corrupt agreements, remained, but now they take place on a regional level. It should be mentioned that communal and public procurements happen on different rules, and, accordingly, give different results. The Ministry of Health-Care of Ukraine makes purchases through different international organizations, which gave the state the opportunity to minimize the corruption and save 40%. In addition, for example, in 2018, 137 million UAH was spent to buy medicines for adult cancer patients. If the procurement of the medicines was done by the Ministry of Healthcare of Ukraine, the same drugs would cost 113 million UAH. The difference between them would be 14 million UAH (more than 20%), which went into the corrupt officials pockets.

In Ukraine there are currently about 30 transnational corporations that have more than 7,000 representatives and affiliates, which operate mainly in food, petroleum, and tobacco manufacturing industries. Separate TNC are taking the roles of partners of Ukrainian companies. The fight between companies for sources of raw materials and marketplaces results in war between States that they are representing. During military conflicts, corruption schemes are forming, in which governments of "interested" states take active participation. Ukraine is a good example for this, where there are military actions taking place in Donetsk and Luhansk regions. According to the results of a sociological research that was requested by the public organization «Detector media», and sponsored by the Embassy of Swedish Kingdom in Ukraine and was conducted by the Kyiv International Institute of Sociology, 65% of Ukrainians are confident that the military action on Donetsk and Luhansk regional territory will not end soon, because this is advantageous to the oligarchs[13]. This is confirmed by the corruption scandal with PC

[13] 65% украинцев считает, что война на востоке продолжается, потому что она выгодна власти и олигархам – соцопрос. URL: http://gordonua.com/news/war/65-ukraincev-schitayut-chto-voyna-na-vostoke-prodolzhaetsya-potomu-chto-ona-vygodna-vlasti-i-oligarham-socopros-173890.html.

«Ukrobronprom» and the information about which is in free access on the Internet.

Concerning the participation in measures for overcoming corruption from such Anti-corruption Civil Organization, it can be stated that they have discredited themselves for the last five years. The usual practice of civil organization against corruption is the realization of covering the costs of many fellowship funds to organize such formal events as seminars and conferences. A huge part of activities of organizations that have been mentioned before is a paragraph of expenses to organize consultations. A good example of this is the CO «Centre of Countering Corruption», which has many materials of journalistic investigations about using the funds of international financial help in the amount of 1.2 million dollars[14].

2. The Reasons and Conditions of High Corruption Levels in Ukraine

Among the reasons and conditions of high level of corruption crimes in Ukraine, which have been observed for the last five years, we could name the following:

– *Economic factors*

A big factor of economical and corruption crimes in Ukraine is the high rate of unemployment among Ukrainians. According to the Employment State Service the unemployment rate in 2015 was 9.1%, in 2016 – 9.9%, and in 2017 it already was 10.1%[15]. This trend also remained in 2018. Due to the long-term slowdown of production that is occurring in many different industries, the amount of people who are only counted in production, but in practice are they are in unpaid vacations is increasing. The last ones are in fact «temporarily» unemployed – the reserve of actual unemployment. The situation with a public joint-stock company "Sumy Machine-Building Scientific Production Association" is a representative example of this, which has always been one of the most powerful manufacturers of oil, gas, atomic and chemical equipment. Nowadays there are only 200 people left at the giant plant (the rest are forcible-voluntarily fired), who work for their "bare enthusiasm", which basically means working without salary and the illusory perspectives of its

[14] Верховний Суд став на бік депутата у справі ЦПК про грантові гроші. url: https://www.pravda.com.ua/news/2018/05/21/7180899/

[15] Рівень безробіття в Україні. URL: https://www2.deloitte.com/ua/uk/footerlinks/newsroom/deloitte-research/social-progress-index.html (дата звернення: 01.09.2018).

payment. The debts of factory workers who became imprisoned in this situation are -– for nine month.

– Political factors

They are connected with the implementation of unconsidered state policy in the economic field, slowing down economic reforms, and the imperfection of legal framework against economic crimes and other big flaws in regulating economic relations, in particular the occurrence of gaps and collisions in its individual provisions. A vivid demonstration of this is the total lack of regulation in the Bitcoin market – which is an off-state payment system and at the same time, a settlement unit in the network, which assures the safety of its functioning and the protection of the system using cryptographic methods. The lack of a consolidated position about regulating the Bitcoin market in Ukraine and also the artificial delay in approving relevant normative-legal acts has resulted in using this crypto-currency in economic cybercrimes and corruption schemes[16].

Also, the lack of proper regulation in public relations in the field of privatization should also be mentioned. In Ukraine there are more than 4000 working economic entities that are owned by the state. In 2015, The Cabinet of Ministers of Ukraine approved the list of state-owned entities that must be privatized, which included more than 300 of such state-owned entities. Worldwide practice is well-aware of positive examples of privatization in such countries as The United Kingdom of Great Britain, Canada, Mexico and Poland, but their process of privatization was rather gradual, unlike Ukraine where the government was forced to sell businesses at a dumping price of 0.68 billion US dollars for 300 businesses in a short period of time. Military actions on the occupied territories of Donetsk and Luhansk also play a role here, as well as the economic crisis, which is resulted in the need to seek additional resources of income to the state budget[17]. Thus, the lack of proper regulation of the public relation in the field of privatizations could be considered a separate organizational and managerial determinant of economic crimes in Ukraine.

[16] Юртаєва К.В. Сучасні тенденції економічної злочинності в Україні. Вісник кримінологічної асоціації України. 2018. № 2 (19). С. 115.

[17] Дем'яненко Л. Приватизація стратегічних підприємств: піар-хід чи реальні інвестиції. URL: http://nbuviap.gov.ua/index.php?option=com_content&view=article&id=1970:privatizatsiya-strategichnikh-pidpriemstv-2&catid=157&Itemid=499 (дата звернення: 01.09.2018).

– *Organizational and managerial factors:*

Ukraine has lost 70 billion dollars in budget revenues due to ineffective governance and insufficient rule and the supremacy of law. This is proved by the results of the research conducted by the Centre of Economic strategy. This amount is higher than the entire Ukrainian external debt.

In Ukraine, instead of continuous improvement and systematic activity in law-enforcement agencies based on the accumulated experience, there are constant rearrangements in the government and the rotation of personnel. Moreover, the current situation requires: a proper coordination of law-enforcement and other state agencies to counter organized crime and corruption; an actual inclusion of an analytic system into the activity of «anti-corruption» agencies with an analytic component, namely, an analytic secret service of investigating criminological processes; the elimination of special forces with duplication of functions of other operational forces and even separate statements, otherwise it is a waste of the state recourses and the lack of specific responsibility of state agencies for these fields of the state activity; the concentration of special departments' efforts on liquidation of certain organized criminal groups, their leaders and corruptive accomplices in the state authorities, which essentially affects on the state economy and state institution activity by their criminal actions; urgent review of the structure and forms of statistic reports.

There is a problem with the consideration of criminal proceedings in court and with the procedure with selecting the judges. A big scope of cases along with the lack of quantity of judges results in significant amount of work on one judge and does not allow a continuous trial with the investigations of criminal proceedings that are being investigated by the NABU detectives. We can assume that one of these reasons could be excessive attention from the mass media to resonance investigations as well as the pressure from the politics side.

– *Normative-legal factors:*

The disadvantages of legal regulations of the economics, which contribute to the growth of corruption-related crimes, are: the presence of gaps in legal regulation; the inconsistency of normative-legal acts from with the socioeconomic decisions and the constant delay of legal regulations from the laws of regulations of economical progress; the collision of law regulations; low quality of law regulations and their inefficiency; the lack of realization mechanisms of law regulations and

etc. Draft laws are often not publicly debated, or there is no time for their discussion. The process of approving some draft laws takes years. A good example of legal incontinency, unpredictability of social consequences, which leads to reduction of Ukraine's image on the international scene, is the cancellation of criminal responsibility for illegal enrichment. The law of Ukraine «On the State Bureau of Investigations» still has numerous gaps and collisions, which I have already mentioned in my works[18]. In particular, the question of realization the mechanism of bringing the SBI workers to disciplinary responsibility, since the Disciplinary Commission has not been created yet, three members of which were elected in May of 2018 by the Council of Civil Control at SBI. According to the director of SBI, R. Truba, there is a norm that does not allow him to approve the composition of the disciplinary commission. One of the progressive novels of the law on SBI is connected with the approval of the SBI director's decisions with his deputies; however, it does not include a mechanism for the implementation of these powers by the deputies, etc.[19].

– *Scientific factor:*

Involving science in the implementation of reforms would allow to increase the quality of the reformative measures and their legal support, but it would also be a real indicator of how serious the intentions to conduct reforms and whether these reforms will be implemented on the principles of democracy.

– *Socio-psychological factors:*

It is possible to note about prevailing anxiety and stressful behaviors in spiritual field of society due to the lack of clear identification in the normative-legal acts and the misunderstanding of military actions on the occupied territories of Ukraine by the civilians. There are reasons to confirm the independent functioning of some social domains (politics, economics, and etc.) from the moral motivation of some individuals. Over the last five years, complex changes have occurred in the system of moral values and ideals that can be characterized as a moral crisis.

The property division of society is clearly seen. The welfare of a large part of the population forced to solve the problems of their own survival under the conditions of occupation, in particular the residents of

[18] Бусол О.Ю. Юридичні колізії Закону України «Про Державне бюро розслідувань». The Journal of Eastern European Law. Журнал східноєвропейського права. Електронне науково-практичне видання. 2016. № 28. С. 4–12.

[19] Директор ДБР Роман Труба про перші результати, взаємодію з ГПУ та проблеми зі створенням Дисциплінарної комісії. Судебно-юридическая газета. № 2 –5 (471–474). 2019. 14 фев.

Donetsk and Luhansk regions of Ukraine has sharply decreased. An appropriate reaction occurs to the market inability to smooth the income differentiation, which motivates them to find a way out of this situation by obtaining additional shadow revenue in the fields of economic activity and fast enrichment. The statistic shows that more than 8 million Ukrainians travel abroad to earn money. A low-level of economic awareness, distrust in the government contributes to this; such opinions are very common between those who commit crimes. This state of mind lowers the people's attention to crimes, committed in the field of economic activity, which also forms the society's negative opinion on committing such crimes to a less extent.

CONCLUSIONS

1. The progress made in overcoming corruption in Ukraine in the recent years has been mainly provided by the reforms that started in 2014.

2. A sustainable intergrowth of big business and the state authorities can be observed. The Verkhovna Rada of Ukraine is currently at the top of the corruption institution ratings according to entrepreneurs in Ukraine (In 2015 such institutions were law-enforcement agencies and medical establishments).

3. The quota principle of the formation of tender commissions was not effective. During the formation of state anti-corruption agencies a tendency for pre-determined candidates to be elected on the positions of the directors of such administrations could be observed.

4. Ukraine, in its fight against corruption is still losing to transnational corporations in their influence on different fields of society development. This is why corruption can not be minimized in the society, because corporations do not get any benefits from stopping it, it is quite the opposite – corruption is the nourishing soil for their activity of enrichment, which is not always legal.

5. The results of the scientific research on preventing corruption conducted by national scientists do not find a proper implementation of the legislation and practice of the administrative activity of the state authorities.

6. The lack of positive progress in the fight against corruption lies in the fact that those who are fighting against it, are in fact, corrupted themselves. It also should be noted that some civil anti-corruption organizations are corrupt as well.

7. There is an extremely negative perception about the measures taken by the Government of Ukraine to prevent corruption among Ukrainians. Instead of stopping a non-constructive public confrontation between two law-enforcement agencies of Ukraine, Ukraine became a witness of the conflict getting more complicated. The pressure on the activists and the journalists has not been stopped. A good example of this trend is the murder of Kateryna Gandziuk.

8. As a result of a conducted analysis, the main factor in the lack of progress against preventing corruption in Ukraine is the clearly-visible political dependence of all anti-corruption agencies. The fact of the lack of progress in the field of preventing corruption is explained by low morality and the lack of proper professional qualities of people that govern the state anti-corruption agencies. The Verkhovna Rada and the Cabinet of Ministers of Ukraine should be directly responsible for the failure of anti-corruption reforms.

9. The solution to the problems mentioned above requires legislative and executive branches of the state of authorities to take serious extraordinary measures to make law and order in the economics, and first of all, to strengthen control, financial and the states functions. Developing the state politics in the sphere of countering organized corruption crimes requires systematic scientific and practical analysis of all the activity fields and taking coordinated measures of all state agencies and the civil society.

10. Considering: the critical importance of strengthening the overcoming the most dangerous organized forms of corruption and transnational crime; the need for control under the subjects on their observing the anti-corruption legislation while conducting actions against corruption, the need to summarize and evaluate the results of their actions; the fact that the fulfillment of the corresponding tasks is entrusted to a number of law-enforcement and other state agencies that belong to different administrations and each conduct their functions and have their own tasks; to organize cooperation for the purpose of state agencies to successfully achieve a joint goal,

I think that it is necessary to create a Coordinating Committee for preventing organized corruption and transnational crime, giving it the broadest possibilities with subordination and the accountability to the President of Ukraine.

SUMMARY

In 2015-2016, several specialized anti-corruption agencies were created – the National Anti-Corruption Bureau of Ukraine (NABU) and the Specialized Anti-Corruption Prosecutor's Office (SAP) – as an independent structural unit in the structure of the General Prosecutor's Office, as well as the State Bureau of Investigations (SBI) and the National Agency for the Prevention of Corruption (NAPC), and others.

The creation, staff and the first steps to new institutions took place in a harsh political struggle and active opposition from the representatives of the political elite, law enforcement agencies and the judiciary, who were interested in maintaining the status quo. As practice shows, the activity of newly-formed agencies does not comply with the public request. This is due to functional weaknesses of the specialized anti-corruption institutions and the failure to reform the judiciary system, and, as a result, in a number of cases the direct opposition of the judges[20].

The main factor in the lack of progress against preventing corruption in Ukraine is the clearly-visible political dependence of all anti-corruption agencies. The fact of the lack of progress in the field of preventing corruption is explained by low morality and the lack of proper professional qualities of people that govern the state anti-corruption agencies. The Verkhovna Rada and the Cabinet of Ministers of Ukraine should be directly responsible for the failure of anti-corruption reforms.

Considering the critical importance of strengthening the preventing the most dangerous organized forms of corruption and transnational crime; the need for control under the subjects for their observing the anti-corruption legislation while conducting actions against corruption, the need to summarize and evaluate the results of their actions; the fact that the fulfillment of the corresponding tasks is entrusted to a number of law-enforcement and other state agencies that belong to different administrations and each conduct their functions and have their own tasks; to organize cooperation for the purpose of state agencies to successfully achieve a joint goal, it is suggested creating a Coordinating Committee for preventing organized corruption and transnational crime, giving it the broadest possibilities with subordination and the accountability to the President of Ukraine.

[20] Україна проти корупції: Економічний фронт. Економічна оцінка антикорупційних заходів у 2014–2018 рр. Дніпро: Середняк Т. К., 2018. 85 с.

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Information about author:
Busol O. Yu.
Doctor of Juridical Sciences, Senior Research Officer,
Chief Researcher the Interagency Scientific and Research Center
on Problems of Combating Organized Crime under the National Security
and Defense Council of Ukraine
1, Solomenskaya Square, Kyiv, 03035, Ukraine,
Head of the Department of Special-Legal Disciplines of the Scientific-Training Humanitarian Institute
of the V. I. Vernadsky Taurida National University
33, John McCain str., Kyiv, 01042, Ukraine

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THE HUMAN RIGHT TO PROFESSIONAL LEGAL ASSISTANCE IN UKRAINE: CONCEPT AND LEGAL NATURE

Dzhuska A. V.

INTRODUCTION

Recognition of any state democratic, social and legal is impossible without creating an effective system of protection of fundamental human rights and freedoms in it. A special place in this system is the right to professional legal assistance.

The topicality of the research of human right to professional legal assistance in Ukraine is especially reinforced by the constitutional and legal reform which was introduced in 2016 in the area of justice. In accordance with the amendments to the Constitution of Ukraine, everyone has the right to professional legal assistance. In cases provided for by law, this assistance is provided free of charge. Everyone is free in choosing a defender of one's rights (Article 59). Article 131^2 of the Constitution of Ukraine states that an attorney provides professional legal assistance in Ukraine. Independence of the attorney is guaranteed. The principles of the organization and activity of the advocacy and practice of law in Ukraine are determined by law. The attorney exclusively represents the other person in court, as well as protection from criminal charges. In addition, the law may specify exceptions for representation in a court in labor disputes, disputes concerning the protection of social rights, elections and referendums, minor disputes, as well as in relation to the representation of minors or infants and persons recognized as incapacitated by the court or whose capacity is limited[1].

First of all, ensuring the right to professional legal assistance is not only the constitutional and legal obligation of the state, but also the observance of international legal obligations undertaken by Ukraine in accordance with the provisions of the United Nations Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) as the basic documents containing universal

[1] Конституція України від 28.06.1996 р. № 254к/96-ВР. URL: http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

standards of human rights, as well as the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) is a basic document of a regional nature (its effect extends to the member states of the Council Europe).

In addition to the Constitution as the Basic Law and international treaties in the field of human rights, the issue of ensuring the right to professional legal assistance is regulated by decisions of the Constitutional Court of Ukraine, the European Court of Human Rights, as well as other normative legal acts (codes, laws, by-laws, in particular, procedural codes, the Laws of Ukraine "On the Bar and Practice of Law" of July 5, 2012, No. 5076-VI, "On the Judiciary and the Status of judges" of June 2, 2016, No. 1402-VIII, "On the Notary" of September 2, 1993, No. 3425-XII, "On Free Legal Aid" of June 2, 2011, No. 3460-VI, etc.).

It should be noted that, unfortunately, at the legislative level the definition of the concept of the right to professional legal assistance is not defined, which increases the relevance of the chosen subject and necessitates the doctrinal interpretation of this concept.

1. Definition of the concept "human right to professional legal assistance"

Researching the decisions of the Constitutional Court of Ukraine we have found that they contain only provisions regarding the right to legal assistance. Thus, in the decision of the Constitutional Court of Ukraine (case about the right to legal assistance) of September 30, 2009, No. 23-rp/2009, it was specified that the right to legal assistance is a guaranteed possibility of every person to receive such assistance in the amount and in the forms determined it, regardless of the nature of the legal relationship of a person with other subjects of law[2]. And in the decision of the Constitutional Court of Ukraine (case about the right to choose a lawyer) of November 16, 2000, No. 13-rp/2000 it is stated that the right to legal assistance is the possibility of an individual to receive legal services guaranteed by the Constitution of Ukraine[3].

[2] Рішення Конституційного Суду України у справі за конституційним зверненням громадянина Голованя Ігоря Володимировича щодо офіційного тлумачення положень статті 59 Конституції України (справа про право на правову допомогу) від 30.09.2009 р. № 23-рп/2009. *Офіційний вісник України*. 2009. № 79. Ст. 62.

[3] Рішення Конституційного Суду України у справі за конституційним зверненням громадянина Солдатова Геннадія Івановича щодо офіційного тлумачення положень статті 59 Конституції України,

The Explanatory note of January 26, 2016, to the Draft Law of Ukraine "On Amendments to the Constitution of Ukraine (Regarding Justice)" of November 25, 2015, No. 3524 states that the right to professional legal assistance is guaranteed by the Basic Law of the State the person's ability to receive high-quality legal services that can only be provided by a professional attorney who has undergone special training and not by another person. At the same time, the proposed formula does not deny the right to legal assistance in general, including the free assistance, which can be provided by another (except for professional attorneys) lawyers. However, emphasis is placed on the assurance received by the person of *professional* assistance[4].

In general, the right to professional legal assistance can be interpreted objectively and subjectively:

– in an objective sense, it is a set of legal norms regulating relations on the provision of professional legal assistance;

– in a subjective sense, it is the person's ability to provide or receive professional legal assistance in order to ensure the rights, freedoms and legitimate interests of the person in need of such assistance is guaranteed by the Constitution of Ukraine and other normative-legal acts[5].

The content of the subjective right of a person to professional legal assistance can be expressed through the following powers: 1) the ability to personally take actions aimed at the implementation of the relevant right (right to own actions), including access to power subjects (international, national) for protection (compulsory security) one's rights; 2) the possibility to abstain from committing certain actions for the realizing one's rights; 3) the ability to demand from other persons proper conduct (the right to other actions or legal proceedings), including for the purpose of enforcing the implementation of the corresponding rights; 4) the possibility to apply to socially obligated persons for the provision of

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статті 44 Кримінально-процесуального кодексу України, статей 268, 271 Кодексу України про адміністративні правопорушення (справа про право вільного вибору захисника) від 16.11.2000 р. № 13-рп/2000. *Офіційний вісник України.* 2000. № 47. Ст. 109.

[4] *Пояснювальна записка від 26.01.2016 р. до* проекту Закону України про внесення змін до Конституції України (щодо правосуддя) від 25.11.2015 р. № 3524. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57209.

[5] Литовченко Л. А., Чуйко О. В. Поняття "право на правову допомогу" та "правова допомога" у контексті конституційного та цивільно-процесуального законодавства. *Науковий вісник Дніпропетровського державного університету внутрішніх справ.* 2011. № 4. С. 159–160.

certain material and other goods for the satisfaction of spiritual and social needs[6].

In our opinion, the human right to professional legal assistance can be considered: 1) firstly, as a separate constitutional right (Article 59 of the Constitution of Ukraine), which can not be limited (second part of the Article 64 of the Constitution of Ukraine), and secondly, as a constitutional guarantee for the implementation, protection of other constitutional human rights and freedoms guaranteed by Articles 29, 40-56, 61, 63 of the Constitution of Ukraine, and thirdly, as a derivative of the constitutional right to information (Article 34 of the Constitution of Ukraine), constitutional law to judicial protection of human rights and freedoms (part one of the Article 55 of the Constitution of Ukraine) and the constitutional right to respect for the dignity of a person (part one of the Article 28 of the Constitution of Ukraine); fourthly, as a mechanism for mediating the relations between the state, society and a person, which is realized in the most important spheres public life by providing appropriate benefits. The peculiarity of the right to professional legal assistance lies in the fact that it mediates relations not only between people, but with the state as a whole; 2) as a complex-component right, the structure of which includes: the right to apply to an attorney for obtaining professional legal assistance for the purpose of the effective implementation, protection of rights, freedoms and legal interests of a person; the right to certain content and quality of received (provided) professional legal assistance; the right to receive legal aid on a free basis in the manner prescribed by law; the right to demand the appropriate active and effective actions from an attorney; the right to information about the possibility of obtaining professional legal assistance, including free of charge; the right to receive professional legal assistance in an accessible and comprehensible language and in a convenient form; the right to demand protection of the violated right; 3) as the most important element that reveals the content of such a basis of the constitutional order, as the legal nature of the state (Article 1 of the Constitution of Ukraine).

As noted above, the human right to professional legal assistance is derived from the right to information. The basis for the right to professional legal assistance is the fundamental social benefits (legal

[6] Ісакова В. М. Право на правову допомогу: поняття, особливості, гарантії: *автореф. дис. … канд. юрид. наук. Харків, 2013. С. 10–11.*

information and protection of human rights, freedoms and legitimate interests). Therefore, when realizing the right to professional legal assistance, a person receives from an attorney the necessary legal information for the purpose for effective protection of one's rights, freedoms and legitimate interests.

Also, it should be noted that the right to professional legal assistance is a constitutional right, since it is guaranteed by the Constitution of Ukraine (Article 59 of Chapter II "Rights, Freedoms and Responsibilities of a Person and a Citizen").

2. The essence of the human right to professional legal assistance

It is necessary to disclose the essence of the concept "professional legal assistance" when researching the legal nature of the human right to professional legal assistance.

A key element of professional legal assistance is the concept "help". Help is a kind of human activity, one of the types of social interaction, one of the forms of social assistance. It represents a type of relationship between actors in which one subject acts in the interests of another to achieve the result of another useful for another subject[7].

The signs of "professional" and "legal", which are added to the concept "help", indicate that this type of activity (assistance) is provided by an attorney (a person of the legal profession, who has the necessary level of professional training, is bound by the rules of professional (lawyer) ethics, legal requirements for access to the profession and bear responsibility for improper performance of one's professional duty)[8].

The term "legal assistance" is used in international law and in the law of certain states which can be interpreted differently.

Thus, there is an extended interpretation of the concept of "the right to legal assistance" within the United Nations standards. "The Basic Principles on the Role of Lawyers" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990) contain the following provisions: all persons are entitled to call upon the assistance of a lawyer

[7] Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 19, 22.

[8] *Пояснювальна записка від 26.01.2016 р. до* проекту Закону України про внесення змін до Конституції України (щодо правосуддя) від 25.11.2015 р. № 3524. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57209.

of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings (paragraph 1); governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources (paragraph 3); advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients (subparagraph (a) of paragraph 13); assisting clients in every appropriate way, and taking legal action to protect their interests (subparagraph (b) of paragraph 13); assisting clients before courts, tribunals or administrative authorities, where appropriate (subparagraph (c) of paragraph 13)[9]. Therefore, the term "legal assistance" combines various types of legal assistance (services), both free of charge and payable.

In accordance with the Resolution (78) 8 "On legal aid and advice" (adopted by the Committee of Ministers of the Council of Europe on 2 March 1978 at the 284th meeting of the Ministers' Deputies), the concepts "legal aid" and "legal advice" have different meanings. This document states: no one should be prevented by economic obstacles from pursuing or defending his right before any court determining civil, commercial, administrative, social or fiscal matters. To this end, all persons should have a right to necessary legal aid in court proceedings. When considering whether legal aid is necessary, account should be taken of: a. a person's financial resources and obligations; b. the anticipated cost of the proceedings (paragraph 1); legal aid should provide for all the costs necessarily incurred by the assisted person in pursuing or defending his legal rights and in particular lawyers' fees, costs of experts, witnesses and translations. It is desirable that, where legal aid is granted, there should be an exemption from any requirement for security for costs (paragraph 3); the state should ensure that a person in an economically weak position should be able to obtain necessary legal advice on all questions arising out

[9] Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990). URL: https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx

of the matters mentioned in principle 1, which may affect his rights or interests (paragraph 12)[10].

Like the law of the Council of Europe, the issue of legal assistance in Germany is solved by the Law on Assistance in the Payment of Procedural Costs of 1980 and the Law on Legal Advice and Representation of People with Low Income since 1994. Moreover, such assistance in Germany is only the means to bear all procedural costs, both forensic and non-judicial, including for the payment of a lawyer's services during the preparation of a case for trial and in court proceedings. Another subsystem of such assistance in Germany is the legal services provided under the relevant provisions of the German Civil Code (BGB) of 1896. Their peculiarity is that in the event of these relations, the equality of their parties is presumed, which is the basic principle of civil legal relations.

French legislation on the provision of legal assistance is fully in line with the position of the United Nations in this matter. In France, legal assistance is: 1) free legal aid; 2) assistance in facilitating access to legal protection: a. providing individuals with general information about their rights and responsibilities, as well as directing persons to organizations responsible for the realization of their rights; b. assistance in the implementation of all measures aimed at the realization of the rights of a person or the fulfillment of legal obligations, as well as assistance in the implementation of extrajudicial procedures; c. legal advice; d. assistance in the compilation and conclusion of legal acts; 3) mediation of a lawyer during detention; 4) assistance in the consideration and resolution of criminal cases.

Legislation of Norway under the legal aid understands only free aid, in particular: legal advice; judicial assistance; exemption from litigation costs.

In England such assistance means different types of legal services that are provided to individuals free of charge. In particular, they have: legal advice; legal support; representation[11].

Considering the interpretation of the concept of legal assistance in the laws of Germany, France, Norway and England we see that a model of

[10] *Resolution* (78) 8 "On legal aid and advice" (adopted by the Committee of Ministers of the Council of Europe on 2 March 1978 at the 284th meeting of the Ministers' Deputies). URL: https://www.euromed-justice.eu/en/system/files/20090128115013_res%2878%298eCoE.pdf

[11] Правова допомога: зарубіжний досвід та пропозиції для України / авт.-упоряд. О. А. Банчук, М. С. Демкова. Київ: Факт, 2004. С. 11–13.

legal assistance implemented in the legislation of France is the most acceptable for Ukraine.

It should be emphasized that in Ukraine exemption from litigation costs is a separate institution of procedural law and does not apply to legal assistance.

It should be noted that there are different approaches (on different grounds) in the legal literature that help characterize the notion of professional legal assistance.

In our opinion, depending on the content and purpose of the activity in the field of law (legal sphere), it is expedient to consider professional legal assistance through the concept "ensuring rights" as the broadest, since it is not limited by implementation or protection.

The professional legal assistance as an ensuring of human rights is a system of measures aimed at the realization and protection of the rights, freedoms and legal interests of an individual, which are implemented by an attorney, and are aimed at achieving full legal protection. At the same time, in the provision of law, a special place is taken in such a way as promotion.

The main features of professional legal assistance, which characterize it as a concept, can be divided into: a. signs of subjects; b. signs of the object; c. structural and informative features (purpose, means, results, interests)[12].

Signs of subjects. The professional legal assistance as an activity takes place within the framework of relations between the subject of the receipt and the subject of provision. The subject of obtaining professional legal assistance is primarily a person (an individual), and the subject of provision (an attorney).

The inability of the subject to realize one's rights, freedoms and legitimate interests by own actions necessitates the provision of professional legal assistance. Such assistance must arise due to the lack of special knowledge and skills in the field of law (ignorance of the rights in one or another life situation, legal means of their implementation, etc.), the existence of legal and/or factual obstacles to the independent realize of legal capacity (incapacity, age, state of health, unwillingness, psychological unwillingness to act by yourself in the legal field, etc.).

[12] Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 102.

The interest of the person, initiative, and the appeal for help is a prerequisite for the provision of professional legal assistance.

The professional legal assistance, as a rule, can not be provided contrary to the will of the subject of obtaining. But there are exceptions to the rules. For example, the legislation of Ukraine establishes a list of cases where the participation of an attorney is mandatory (Article 52 of the Criminal Procedural Code of Ukraine).

The subject of the provision of professional legal assistance in the organizational and structural plan is a person acting in accordance with the procedure established by law, and doing this type of professional activity. The subject of the provision of professional legal assistance is an attorney, that is, an individual who is subject to very serious professional requirements (the presence of complete higher legal education, possession of the state language, the presence of work experience in the field of law of not less than two years, passing a qualifying examination, undergoing internship (except in cases established by the Law of Ukraine "On the Bar and Practice of Law"), the swearing an oath of an attorney of Ukraine and obtaining a certificate on the right to practice of law)[13].

It is worthwhile to focus on such a concept as the qualification of a person who provides legal assistance (in particular, it will be a question of attorneys and other lawyers).

The qualification of the person providing legal assistance is, first of all, the degree and type of professional education of the subject of such assistance, the presence of one's knowledge, skills and abilities necessary for its implementation. In this aspect, a sign of qualification is associated with the characteristics of the subject of the provision, which is confirmed by official documents (on education, experience in the field of law, etc.). Qualification is the external aspect of legal assistance, which reflects the state of the subject of its provision. In a dynamic, meaningful plan qualification means a measure of quality, the level of the activity oneself, its characteristics, depending on complexity, accuracy, responsibility, compliance with laws, requirements, rules of optimal use of means, methods of assistance in each case[14].

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[13] *Про адвокатуру та адвокатську діяльність: Закон України від 05.07.2012 р. № 5076-VI.* Відомості Верховної Ради України. *2013. № 27. Ст. 282;* Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 103–104.

[14] Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 104–105.

The qualification of legal assistance covers two aspects: the qualification (professionalism) of the subject of provision (and in this sense is a feature that characterizes the subject of provision) and the quality of the assistance (this is already a sign of the activity oneself, its structure and content). Before the actual provision of legal assistance, it is not possible to say whether it is qualified or not. Therefore, the concept of "legal assistance" and "qualified legal assistance" relate both to the generic and specific notion[15].

In addition, legal assistance must be effective in line with international practice. The requirement for the effectiveness of legal assistance involves the introduction of a special term "minimum standards for qualified legal assistance", among which: the legal education of the person providing the assistance; presentation of special requirements (qualification exam, internship, etc.) to a person who provides certain types of legal assistance; activity of providing legal assistance[16].

The European Court of Human Rights has repeatedly stated the violation of the right to protection in cases where the defender was formally appointed, but did not effectively protect. Indicative is the judgment of the European Court of Human Rights (Yaremenko v. Ukraine of June 12, 2008), in which each of the two defenders representing the applicant saw him only once and only during the interrogation, and none of them interrogated he did not see the applicant, indicating the symbolic nature of their services. In this case, the Court questioned the protection of the applicant's effective defense[17].

The professional legal assistance provided by the attorney, poorly, without reason, can not be called qualified. And this is a serious problem, especially when it comes to the protection of criminal prosecution. Unfortunately, in Ukraine there are no tools that fully guarantee the quality of attorneys' services, especially those who provide free secondary legal aid. The low quality of the assistance provided can be explained by the low level of services provided by the attorneys providing free

[15] Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 108.

[16] Мельниченко Р. Г. Конституционное право на юридическую помощь: автореф. дис. … канд. юрид. наук. Волгоград, 2001. С. 13.

[17] Степанова С. В. Ефективна допомога захисника як складова конституційного права на професійну правничу допомогу та міжнародний стандарт права на справедливий суд. *Юриспруденція у формуванні правової держави та громадянського суспільства*: матеріали міжнарод. юрид. наук.-практ. Інтернет-конф. (06.10.2016 р.). URL: http://legalactivity.com.ua/index.php?option=com_content&view=article&id=1332%3A041016-20&catid=161%3A2-1016&Itemid=201&lang=ru.

secondary legal aid, which is directly dependent on public funding. Therefore, the state is obliged to create certain conditions for the implementation of the human right to professional legal assistance, given that such assistance should be real, professional and qualified. At this time, the first steps have been taken to create such conditions. In particular, it refers to the adopted Law of Ukraine "On the Bar and Practice of Law" and the Lawyer's Ethics Rules, which set up quite serious professional requirements for the profession of attorneys. Thus, the state fully shares the responsibility for the professionalism of the assistance of attorneys[18].

If professional legal assistance is provided by an attorney in violation of the rules of law (in particular, the Law of Ukraine "On the Bar and Practice of Law") and/or norms of professional ethics (the Lawyer's Ethics Rules), then such assistance may be considered unqualified.

We note the fact that the norm of the Article 59 of the Constitution of Ukraine guarantees everyone the right to professional legal assistance, but there is no question of qualification in it. It can be assumed that the legislator, when replacing the concept of "legal assistance" with the term "professional legal assistance" in the Basic Law, meant that the sign "professional" would mean that such assistance would be provided by a qualified person of the attorney profession.

Signs of the object. The object of professional legal assistance is a problematic legal situation, that is, the problematic life situation of the subject of its receipt, which has a legal character. In this case, under the problematic legal situation is understood complex life circumstances (conflict or state in the relations of people threatening the conflict), on the outside (dispute, divergence of interests, rivalry of thoughts and intentions, which requires the legal solution)[19].

The problematic legal situation as an object of professional legal assistance is characterized by the fact that:

– this is the life situation of a person which exists as objective (in quantitative terms, the totality of social, first of all, legal, relations, factors and circumstances), as well as that which exists in one's consciousness;

[18] Степанова С. В. Ефективна допомога захисника як складова конституційного права на професійну правничу допомогу та міжнародний стандарт права на справедливий суд. *Юриспруденція у формуванні правової держави та громадянського суспільства*: матеріали міжнарод. юрид. наук.-практ. Інтернет-конф. (06.10.2016 р.). URL: http://legalactivity.com.ua/index.php?option=com_content&view=article&id=1332%3A041016-20&catid=161%3A2-1016&Itemid=201&lang=ru.

[19] Алексеев С. С. Восхождение к праву. Поиски и решения. Москва: Норма, 2001. С. 256–259.

– the situation hinders the use of legal possibilities (rights, freedoms, legitimate interests), making it difficult to realize the various interests of the person receiving professional legal assistance;

– the legal nature of the life situation is conditioned by the presence of real or predictable social ties in the field of legal regulation and the necessity of its solution by means of a legal nature;

– the problematic nature of the legal situation is caused by the inability of the person to transform it (to resolve it) through the independent realize of the rights, freedoms and legitimate interests which are due to it[20].

Structural and content signs. Professional legal assistance is a promotion that is carried out in the interests of another person. Like all other social needs of a person, the need for such assistance arises when its satisfaction is a means of realizing a particular interest[21]. The realization of the interests of another person is the main process in respect of which professional legal assistance has an "auxiliary" character, the course of which it facilitates, supports. Specific for such assistance is that the realization of interests takes place in the legal field, in public relations, which constitute the subject of legal regulation (in the problematic legal situation)[22].

The important feature of professional legal assistance as a form of assistance is the priority of the rights, freedoms and legitimate interests of a person receiving such assistance to meet one's individual interests[23]. Note that in the first part of the Article 28 of the Law of Ukraine "On the Bar and Practice of Law" it is indicated that "an attorney, attorney bureau or attorney company shall not enter into the contract on provision of legal services in the event of conflict of interest"[24].

The professional legal assistance is the purposeful activity. The main objectives of professional legal assistance include: ensuring the rights, freedoms and legitimate interests of the individual, achieving maximum

[20] Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 111–112.

[21] Михайловская И. Б., Кузьминская Е. Ф., Мазаев Ю. Н. Юридическая помощь населению: потребности и возможности. Москва. 1995. С. 8.

[22] Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 115.

[23] Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 122.

[24] *Про адвокатуру та адвокатську діяльність: Закон України від 05.07.2012 р. № 5076-VI.* Відомості Верховної Ради України. *2013. № 27. Ст. 282*

degree of one's security; provision of a favorable human life; creating a person with legal means favorable conditions for the protection of one's subjective rights; protection of human rights, etc. Undoubtedly, professional legal assistance, acting as a legal guarantee of the rights and freedoms, is an important element of the mechanism of ensuring the rights and freedoms of individual and citizen and in the system with other legal means working to achieve their full realization[25].

The main objective of professional legal assistance is to maximize the full realization of the rights, freedoms and legitimate interests of the subjects interested in it by transforming (overcoming or preventing) a specific problematic legal situation[26].

At the same time, it should be noted that the provision of paid professional legal assistance (on a contractual basis) does not guarantee the receipt of a positive result in the case in favour of the client. Therefore, paid professional legal assistance has a risk (aleatory) character.

The content of professional legal assistance consists of actions using the means of a legal nature, which are carried out by the subject of such assistance (attorney), on the grounds and in a manner not prohibited by the Constitution and laws of Ukraine. If such assistance is out of the law, then it can not be granted. This content of assistance gives it the property of "legality", the legal nature, which consists in the predominant use of legal means to achieve goals, the establishment, change and termination of legal relations, that is, to obtain a legal result[27]. Such assistance can be: provision of legal information, consultations and legal clarifications, statements, complaints, procedural and other documents of a legal nature, representation of the interests of a person in courts, other state bodies, local self-government bodies, other persons, provision protecting a person from prosecution, providing a person with assistance in securing access to secondary legal assistance and mediation[28]. In addition, the commission of actions (services) that constitute professional legal assistance may have

[25] Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 125.

[26] Панченко В. Ю. Юридическая помощь (вопросы общей теории): монография. Красноярск: Сиб. федер. ун-т, 2011. С. 127**;** Андрусів В. Г. Співвідношення забезпечення адвокатурою права на захист з наданням правової допомоги. *Бюлетень Міністерства юстиції України.* 2006. № 12 (62). С. 130.

[27] Жалинский А. Э. Основы профессиональной деятельности юриста. Введение в специальность. Смоленск: Изд-во Смол. ун-та, 1995. С. 14–15.

[28] Закон України "Про безоплатну правову допомогу". Науково-практичний коментар / за заг. ред. М. В. Оніщука. Київ: КП-Сервіс, 2012. С. 11.

the meaning of a legal fact (events, actions, state) that generates, modifies or terminates a specific legal relationship. For example, after having filed a lawsuit with an attorney and lodging it with a court (a legal fact), the person acquires the status of participant in the trial (there are certain legal consequences, there is a legal relationship). Otherwise, for example, legal information or counseling carried out by a lawyer does not cause legal consequences when the received legal information remains only in the consciousness of the person which receives professional legal assistance.

The professional legal assistance (as well as any activity) has two sides: external (objective) – external actions of the subject of assistance, aimed at transforming (overcoming) the problematic legal situation, and internal (subjective) – mental activity of the subject of the assistance (this consideration goes beyond the scope of this research).

The subject of provision of professional legal assistance while doing certain acts for the interests of the recipient of the assistance uses legal means (means of demeanours and means of doing (technologies)) through which the interests of the subjects of law are met, socially useful goals are achieved. Since professional legal assistance is an action taken by the subject of provision in the interest of the subject of receiving the assistance, then it (professional legal assistance) is a mean of doing.

It should be noted that legal means used in the provision of professional legal assistance include legal advice and counseling. The subject provides professional assistance to the subject of obtaining legal assistance to choose the best, most optimal legal mean from all the existing volume of such means that is necessary in a particular life situation.

Thus, taking into account the foregoing, we conclude that professional legal assistance should be understood as the activity carried out by an attorney (on a paid or non-paid basis), which pursues the sole purpose of effectively implementing the rights, freedoms and legitimate interests of a person.

The provision of professional legal assistance must comply with certain principles, among which a special place is: the rule of law (in accordance with the Article 8 of the Constitution of Ukraine in Ukraine, the principle of the rule of law is recognized and in force, in which the norms of the Constitution are rules of direct action and appeal to the court to protect constitutional rights and freedoms of a person and a citizen are

guaranteed directly on the basis of the Constitution of Ukraine. The provision of the right to professional legal assistance stipulated by the Article 59 of the Constitution of Ukraine is the responsibility of the state depending on the fixing of the relevant mechanisms for the implementation of this right in laws or other normative legal acts of Ukraine); legality (the provision of professional legal assistance in Ukraine is possible only on the principles stipulated by the Constitution, other normative legal acts of Ukraine, the international treaties in force, the consent to which the Verkhovna Rada of Ukraine has obligated)[29]; independence (any external influence, pressure or interference in the process of rendering professional legal assistance, in particular from the state and local authorities, their officials, political parties, as well as the influence of the individual interests of the subject of such assistance is prohibited)[30]; preventive (professional legal assistance promotes the legitimate exercise of one's rights and freedoms, as well as aims to prevent possible violations or illegal restrictions of human rights and freedoms)[31]; the inadmissibility of a conflict of interests (no conflict between the personal interests of the subject of the provision of professional legal assistance and one's professional rights and obligations); confidentiality (limited access of a certain circle of persons to information defined by law, or is personal data about an individual protected by the legislation on protection of personal data)[32]; quality (the state, guaranteeing everyone the right to professional legal assistance, establishes appropriate professional and other criteria for the entities that are entitled/obliged to provide this assistance, thus sharing the responsibility for the quality of such assistance), etc.[33].

[29] Закон України "Про безоплатну правову допомогу". Науково-практичний коментар / за заг. ред. М. В. Оніщука. Київ: КП-Сервіс, 2012. С. 15.

[30] Правила адвокатської етики: затв. Звітно-виборним з'їздом адвокатів України 09.06.2017 р. URL: http://vkdka.org/pravila-advokatskoji-etiki-zatverdzheni-zvitno-vibornim-zjizdom-advokativ-ukrajini-2017

[31] Рішення Конституційного Суду України у справі за конституційним зверненням громадянина Голованя Ігоря Володимировича щодо офіційного тлумачення положень статті 59 Конституції України (справа про право на правову допомогу) від 30.09.2009 р. № 23-рп/2009. *Офіційний вісник України*. 2009. № 79. Ст. 62.

[32] Правила адвокатської етики: затв. Звітно-виборним з'їздом адвокатів України 09.06.2017 р. URL: http://vkdka.org/pravila-advokatskoji-etiki-zatverdzheni-zvitno-vibornim-zjizdom-advokativ-ukrajini-2017

[33] Закон України "Про безоплатну правову допомогу". Науково-практичний коментар / за заг. ред. М. В. Оніщука. Київ: КП-Сервіс, 2012. С. 16.

3. The human right to professional legal assistance as part of the right to a fair trial and accessible justice

The human right to professional legal assistance should be considered as part of the right to a fair trial and accessible justice, which in turn is an important aspect of the practical implementation of the rule of law[34].

The right to a fair trial is enshrined in first paragraph of the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), which states that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice". Besides, the Article 6, paragraph 3 (c) of this Convention contains provisions that "everyone charged with a criminal offence has the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require"[35].

Article 10 of the Law of Ukraine "On the Judiciary and the Status of judges" of June 2, 2016, No. 1402-VIII, entitled "Professional Legal Assistance in the Realization of the Right to a Fair Court", duplicates the provisions of the Constitution of Ukraine regarding the right of a person to professional legal assistance[36].

The concept of a fair trial contains criteria for assessing, first of all, the procedures for judicial review, that is, procedural justice. Any social institution, including the right, can not be fair without ensuring its availability, or the opportunity to take advantage of it, because the idea of

[34] Гомьен Д., Харрис Д., Зваак Л. Европейская конвенция о правах человека и Европейская социальная хартия: право и практика. Москва: МНИМП, 1998. С. 279.

[35] Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4.XI.1950) as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16. URL: https://www.echr.coe.int/Documents/Convention_ENG.pdf

[36] Про судоустрій і статус суддів: Закон України від 02.06.2016 р. № 1402-VIII. *Офіційний вісник України*. 2016. № 56. Ст. 1935.

free and equal distribution of social benefits is violated[37]. The scientists admit that the driving force for the formation of the "access to justice" movement was the problems associated with the implementation of the right to legal assistance, namely, the inability to receive it by poor people[38].

Ukrainian researcher V. Isakova notes that "the very existence in the legal system of rights raises the question of the possibility of their forced implementation, and in the event that a person does not have the possibility of free access to the instruments of such coercion, logic requires that a mechanism for legal assistance be created. Legal assistance in this case is one of the elements that can ensure the enforcement of rights, although, of course, not the only one. The right to legal assistance is a matter of such paramount importance that all other rights relating to a fair trial may be waived of any value if this right is not respected". Without the existence of a court, human rights and freedoms can not be adequately protected in the event that another person is threatened with subjective rights and freedoms. The basis of the modern concept of just or proper justice naturally forms the principle of free access to justice[39].

Also, the right to professional legal assistance is an important element of the accessibility of justice, which is a necessary sign of the legal state. In this aspect V. Isakova said that "both judges, practicing lawyers and smart people are clear that in most cases ... people without a lawyer do not receive the same justice in quality as others and successfully removed from real access to the judicial system"[40].

O. Ovcharenko considered the accessibility of justice as a principle of organization and activity of the judiciary, the essence of which is the absence of factual and legal obstacles to appealing to the court for the protection of one's rights. The content of justice is disclosed through a set of its elements: 1) legal (institutional and procedural): the territorial proximity of the court; openness of information about it; universal jurisdiction of the court; its competence; stability of the judicial system;

[37] Овчаренко О. М. Доступність правосуддя та гарантії його реалізації: монографія. Харків: Право, 2008. С. 23.

[38] Сакара Н. Ю. Проблема доступності правосуддя у цивільних справах: дис. … канд. юрид. наук. Харків, 2006. С. 16.

[39] Ісакова В. М. Право на правову допомогу як елемент принципу доступності правосуддя. *Форум права.* 2012. № 4. С. 405.

[40] Ісакова В. М. Право на правову допомогу як елемент принципу доступності правосуддя. *Форум права.* 2012. № 4. С. 405.

2) social: the need of citizens in resolving legal conflicts that arise in society; the level of development of the legal consciousness of society as a whole and individual citizens, which consists in legal awareness of the population and in the trust of citizens in court; the level of justice of the carriers of the judiciary (judges); 3) economic: the state's expenditure on the financing of the judiciary; expenses of the parties and other participants of the case, provided by procedural legislation; expenses of the state on providing access to the court of the poorest sections of the population[41].

Thus, the right to professional legal assistance is one aspect of access to justice and the right to a fair trial.

Taking into account the foregoing, one can conclude that the human right to professional legal assistance is guaranteed by the Constitution of Ukraine, other normative legal acts, the opportunity of the individual to receive (on a paid or free basis) assistance from an attorney, consisting of solving a problem legal situation in order to effectively provision one's rights, freedoms and legitimate interests.

Specific features of professional legal assistance are:

1) is a kind of professional activity carried out by an advocate;

2) provides for legal content in actions (services), in particular, provision of legal information and consultations, preparation of documents of a legal nature, representation of another person in a court, protection of the person from the criminal prosecution, etc., that may be relevant to a legal fact that generates, changes or terminates specific legal relationship;

3) may be provided on a paid or free basis;

4) is risky if it is provided on a paid basis (on a contractual basis) because the provision of professional legal assistance does not guarantee the receipt of a positive result in the case in favour of the client;

5) conforms to the principles of the rule of law, legality, independence, preventive, inadmissibility of a conflict of interests, confidentiality, quality, etc.

The human right to professional legal assistance, firstly, is the fundamental, inalienable right of everyone, which is a set of legal possibilities of an individual as a participant in legal relations, in order to

[41] Овчаренко О. М. Доступність правосуддя та гарантії його реалізації: монографія. Харків: Право, 2008. С. 13, 74.

achieve the set legal goals, and secondly, it serves as a key constitutional guarantee for provision of other human rights (including the right to a fair trial)[42]. That's why, the human right to professional legal assistance is considered as having a dualistic legal nature.

SUMMARY

The article deals with the concept and legal nature of the right to professional legal assistance. In this aspect, the essence of professional legal assistance and its special features are disclosed.

It has been established that this right, firstly, is the fundamental, inalienable right of everyone, which is a set of legal possibilities of an individual as a participant in legal relations, in order to achieve the set legal goals, and secondly, it serves as a key constitutional guarantee for the provision of other human rights (including the right to fair trial). Particular attention is paid to the right to professional legal assistance as one of the aspects of access to justice and the right to a fair trial.

The article focuses on the fact that the provision of the right to professional legal assistance is not only a constitutional and legal duty of the state, but also observance of the international legal obligations undertaken by Ukraine in accordance with the provisions of international agreements in the field of human rights.

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Information about the author:
Dzhuska A. V.
Ph.D in Law, Lecturer at the Department of Constitutional
and International Law
of the Educational and Scientific Humanitarian Institute
of the V. I. Vernadsky Taurida National University
33, I. Kudri str., Kyiv, 02000, Ukraine

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CRIMINAL LEGAL POLICY IN COUNTERACTION TO CRIMES AGAINST OWNERSHIP AS A BASIS FOR OWNERSHIP PROTECTION IN UKRAINE

Dorokhina Yu. A.

The issue represented in the name of the given subsection is very urgent, but complex at the same time because criminal legal policy as for crimes against ownership is the field of human and social life activity, having the aim of orientation of public development by determining general goals and approving directions of ownership protection by criminal legal means. Unfortunately, today there are no clearly formed concepts, structure, tasks, principles and levels of such policy in legal doctrine of Ukraine.

Rare works of scientists dedicated to this range of problems can not give an opportunity to obtain a holistic idea about the said legal phenomenon. However, in view of the fact that Ukraine has undertaken to adapt own legal system to the legal system of the European Union, this process, in our opinion, should be started, first of all, from scientific theoretical development of relevant legal structures and, firstly, the ones requiring improvement within the national legal theory. It is the abovementioned that explains relevancy and urgent necessity for the development of doctrinal provisions of criminal legal policy as for crimes against ownership.

We should begin with the issue that includes the concept of policy. The words of Carl Schmitt are demonstrative in this case: “one can rarely come across a clear definition of the political. In most cases this word is used only in a negative way, in contrast to the concepts in such antithesis as … “policy and law”, and in law it is antithesis again “policy and civil law” etc. > < In special literature there are many such descriptions of the political, which, however, as they have no political polemical sense, can be clear only due to practical technical interest in legal or administrative settlement of single cases. Such definitions, meeting the need of practice, in fact, seek only a practical means for separation of different actual

obligations arising inside the state in its legal practice but the aim of these definitions is not a common definition of the political as such"[1].

Most of researches note that the policy specificity is connected with the ability to ensure integrity of society; agree different groups of interests, regulate public relations effectively. Policy content can be revealed by forming its essential features: 1) policy is a field of power relations, relations as for power, its organization, division between different groups of interests, determination of direction of a state activity and its institutions; 2) policy is a way of public life organization based on integration of various interests, their agreement on the basis of common interest, uniting all society members; implementation and prevalence of common interest in contrast to the needs of private individuals, groups etc; 3) police is an activity of elite and leaders concerning management and administration of public development processes at all levels by using state authorities [2] [3] [4].

Policy as a social phenomenon is a diverse, dynamic thing which forms the main directions in the development of legal and other fields of social existence and state. The formation of such directions of the development in a legal field allows determining its main priorities, settling law-making activity, and this way ensuring the creation of effective mechanism of legal regulation. The above mentioned can be achieved by forming the legal policy which is called for balance and settle the legal life.

Legal policy is a multilevel legal institution, which includes: 1) ideas, principles, goals, tasks that form a certain conceptual basis of the policy in the field of law, and their absence destroys the process of building up a system; 2) legal and political conditions developed over a certain period of time; 3) strategies and tactics of legal development; 4) means of legal policy.

Improvement of legal policy should lead to changes and facilitate the development of social reality. In turn, legal science should "not only

[1] Шмитт К. Понятие политического. М., 2011

[2] Мухаев, Р. Т. Политология : учеб. для студентов вузов / Р. Т. Мухаев. – 3-е изд., пераб. и доп. – М.: ЮНИТИ-ДАНА, 2005.

[3] Новий тлумачний словник української мови: у 3 Т. / Уклад. В. Яровенко, О. Коліушко. – К.: Аконіт, 1998. – Т. 3. – С. 514-542., с. 514.

[4] Политология: учеб пособие для техн. вузов / М. А. Василик, И. П. Вишнякова-Вишневецкая, Ю. Г. Вилунас и др.; под ред. М. В. Василика. – 4-е изд., перераб. и доп. – Спб.: Пионер; М.: Астрель: АСТ, 2005.

comment and systematize legal phenomena and processes, but logically "count" possibilities of improvement and transformation of legal reality, foresee possibilities of its development"[5]. The main aim of state legal policy is a stable effective development of a legal system.

An important component of legal policy is counteraction to crime, which is designed to reduce its level and ensure the state, meeting the needs of protecting society from crime[6]. State policy in the field of counteraction of crime consists of types, features of which are determined by the tasks, subject and methods of achieving the results necessary for society. Such types are: criminal law, criminal procedure, criminal-executive and criminological policy[7].

The concept of "criminal legal policy" is used and interpreted in a special literature ambiguously. In legal science, there are different views on the issue of how the concept itself should sound: "criminal policy" or "criminal legal policy". Most contemporary authors use the concept of "criminal legal policy" to determine the policy related to formation of a system of rules of substantial criminal law, determination of boundaries of the criminal and non-criminal, problems of effectiveness of substantial criminal law implementation, etc." [8]

The Criminal Code reflects a stable, predictable and effective criminal policy of the state, consolidating its directions, [9] formed on the basis of grouping of objects of criminal infringement (the criterion for such division is the generic object of crime) and determined by the level of significance of public relations regulated by them.

P. L. Fris, V. I. Borisov distinguish directions according to the fields of criminal law policy, distinguishing, among others, criminal legal policy in counteraction to crimes against ownership[10]. We can not absolutely agree with the above wording, since any direction is in the field of a certain defined group of public relations. The direction of criminal legal

[5] Керимов Д.А. Методология права (предмет, функции, проблемы философии права). – М., 2000., с. 284.

[6] Борисов В. І. Сучасна політика держави у сфері боротьби зі злочинністю та її кримінально–правовий напрям // Право України. – 2012. – № 1–2. – С. 232.

[7] Коробеев А. И. Советская уголовно-правовая политика: проблемы криминализации и пенализации. – Владивосток, 1987. – С. 46–48.

[8] Борисов В.І., Фріс П.Л. Ефективність кримінально-правової політики / Вісник Асоціації кримінального права України, 2014, № 1(2). – С. 1-18, с. 5

[9] Тацій В. Боротьба зі злочинністю на початку XXI ст.– проблема сьогодення / В. Тацій // Щорічник українського права: зб. наук. праць. – 2009. – № 1. – С. 215–228., с. 217.

[10] Борисов В.І., Фріс П.Л. Ефективність кримінально-правової політики / Вісник Асоціації кримінального права України, 2014, № 1(2). – С. 1-18, с. 5.

policy determines its goal-oriented action. The field of policy implementation characterizes the very range of public relations, through which the direction of criminal legal policy is going. Criminal legal policy as for counteraction to crimes against ownership is the direction of criminal legal policy, the actions of which are in the field of public ownership relations and aimed at securing public relations, inherent in ownership relations, from socially dangerous infringements by means of criminal law.

The model of criminal legal policy as for counteraction to crimes against ownership, as the basis of its doctrine, should include the following components: the object, the subject matter, subjects, purpose, scope, vectors and principles. Its development is determined by the following factors: 1) today there is no single system approach to ownership protection; 2) requirements for improving the protection of ownership are being increased, taking into account its distribution to separate objects of protection; 3) there is no algorithm for improving ownership protection under the conditions of globalization and virtualization of the world in the postmodern era.

Evaluating ownership as the highest value and, objects requiring criminal legal protection respectively, the criminal legal policy as for counteraction to crimes against ownership is designed to create a system of political and legal measures aimed at securing ownership from socially dangerous infringements. Criminal legal policy as for counteraction to crimes against ownership should be considered as a policy whose system of measures ensures the proper development, timely implementation and effective exercise of norms of substantial criminal law, aimed at securing ownership from socially dangerous infringements.

The object of the criminal legal policy as for counteraction to crimes against ownership is the safety of those public relations from socially dangerous infringements covered by the action of such policy. Certainly, the scope of criminal legal policy as for counteraction to crimes against ownership is not limited to public relations in the field of ownership. The spectrum of such relations is much wider.

Objects of property are in a state of continuous interaction with other objects and subjects, and such interaction is accompanied by emergence of new forms and types of criminal infringements. Therefore, the process of searching and obtaining new knowledge about crimes in the ownership

field and the most effective measures to ensure the protection of ownership by criminal law means are of great significance.

In order to develop or create a program of certain measures that meet the requirements of the present, first of all, it is necessary to make the definitions clear. Correct definition of essence of the ownership concept is an important precondition for its successful and full existence.

Legal literature recognizes inter-branch nature of the ownership institution[11]. Since ownership is the object of not only civil, but also labor, administrative, financial, criminal legal relations, this category is of common law, and accordingly its concept should be the single one for the legal system. Unfortunately, today ownership, as an integral part of the national legal system, is broken by branch sciences and national legislation into parts. In order to prevent the splitting of the concept integrity, it is necessary to strive for its content to be inter-integral. The heterogeneous understanding of this category is a major obstacle to improving criminal legislation aimed at ownership protection, eliminating collisions in criminal law, and developing a modern criminal legal policy in the field of counteraction to crimes against ownership.

During the history, the path to understanding the ownership concept in law was ambiguous. In pre-revolutionary jurisprudence, ownership right was seen as a complete domination of a person over a thing[12]. For the founders of the Soviet legal school an economic view of ownership was typical[13]. The fact that the economic relations of ownership, having acquired legal regulation, became ownership right relations was generally recognized[14] [15] [16] [17].

Pre-revolutionary criminal law placed the emphasis on the protection of not the nature of ownership right, but different ways of its use. The criminal conclusions of that time criminalized actions against the illegal use, possession and disposal of someone else's property. Offenses against

[11] Мазаев В. Д. Публичная собственность в России. Конституционные основы / В. Д. Мазаев. – Москва, 2004. – 380 с., с. 132.

[12] Шершеневич Г. Ф. Учебник русского гражданского права (по изданию 1907 г.). М., 1995. С. 165–166.

[13] Рыженков А. Я., Черноморец А. Е. Очерки теории права собственности (прошлое и настоящее). – Волгоград, 2005. – 675 с., с. 605.

[14] Братусь С.Н. Предмет и система советского гражданского права. − М., 1963. − 196 с., с. 21-23.

[15] Венедиктов А.В. Государственная социалистическая собственность. − М., 1948.–834 с., с. 22-28.

[16] Маслов В.Ф. Основные проблемы права личной собственности в период строительства коммунизма в СССР. –Харьков: изд-во ХГУ 1968–320 с., с. 7.

[17] Червоний Б.С. Методологічні проблеми регуляванне відносин власності в законодавстві України // Економіко-правові проблеми трансформації відносин власності в Україні. К., 1997. −С. 42-44., с. 42-44.

ownership were reduced to a violation of the procedure and ways of its use, namely, "to four main types: 1) unauthorized acquisition; 2) unauthorized use; 3) unauthorized disposal and 4) acquisition of known someone else's things, or … stealing of someone else's property"[18].

Having approved the objects of protection, pre-revolutionary criminal law adapted the ownership institution to them. The diversity of subjects (owner, lessee, creditor, etc.) was simplified in the same way; each of them had an independent legal status and an individual relation to ownership. Theorists of criminal law, guided by the fact that none of them affected the content of unlawful acts[19], took those properties of subjects as a basis that were sufficient for the concept of "plunder". And it was characterized by a close connection, which contained only the subject of plunder and someone else's property. For the criminal law of that time a person, physically connected with the thing, was enough. There was no owner in this chain. In this view, L. S. Belogrits-Kotlyarevsky noted that it was important for the theory of criminal law that the property was in the person's possession[20]. V. D. Spasovich added: "it is not important whether it is an owner, lessee, or dishonest possessor; one can steal property even from a thief"[21]. M. D. Sergeevsky, agreeing with the position above, noted: "for the composition of theft it is not importation on which ground a person owns a thing which has been stolen from him"[22].

The opinions mentioned became priority in the theory of criminal law of that time that proved the fact of adaptation of Roman conception of individual property possession according to which "legal protection is followed a property possessor not an owner, not depending whether he is given authority in the form of ownership right or in other form of individual use of things"[23].

[18] Неклюдов Н. А. Руководство к Особенной части русского уголовного права / Н. А. Неклюдов. – Санкт-Петербург, 1876. – Т. 2. – 564 с., с. 2.

[19] Чебышев-Дмитриев А. Русское уголовное право. Особенная часть / А. Чебышев-Дмитриев. – Санкт-Петербург, 1866. – С. 19.

[20] Белогриц-Котляреский Л. С. Учебник русского уголовного права : учебник / Л. С. Белогриц-Котляреский. – Киев ; Харьков, 1903. – 870 с., с. 403.

[21] Замечания на проект Особенной части Уголовного уложения / Сост. членами Санкт-Петербургского Замечания на проект Особенной части Уголовного уложения / сост. членами Санкт-Петербургского юридического общества: В. Д. Спасовичем, С. А. Андреевским, Г. В. Гантовером, А. А. Герке, Е. И. Утиным. – Санкт-Петербург, 1887. – С. 180.

[22] Сергеевский Н. Д. Конспект Особенной части русского уголовного права / Н. Д. Сергеевский. – Санкт-Петербург, 1884. – С. 61.

[23] Муромцев С. А. Гражданское право Древнего Рима / С. А. Муромцев. – Москва, 2003. – С. 124.

M. A. Nekludov outlined the basic categories of the institutions of crimes against ownership and pointed out: “ownership – a set of external objects and property rights belonging to the person”[24]. As a result, the subject matter of the crime was both ownership and property. The difference between them consisted only in the fact that the property includes things that have a market value, and the ownership has a personal value (subjective).

Scientific approaches to ownership were also expressed by other scholars (V. D. Spasovich, S. O. Andriivsky, G. V. Gantower, A. A. Gerke, E. I. Kachin), who understood this category only because of possession of the thing[25]. In their opinion, ownership, as evidence of an ideal connection between a person and things, can not be the object of criminal legal protection. For protection it must have an actual connection of property with a person.

Thus, pre-revolutionary criminal law protected the rights of not legal, but the actual owner, user and property manager. This approach to ownership was the basis of the pre-revolutionary theory of crimes against ownership. In this theory, ownership (as well as the owner himself) was an abstract concept. As a result, the institution of ownership was simplified. Pre-revolutionary lawyers identified the possessor with the owner and the ownership with the property. Ownership right was replaced by possession, as well as other material rights.

The system of Soviet criminal law preserved uncertainty of ownership institution provision. Theories of Soviet criminal law emphasized the property as “protection of physical prevalence of a person over a thing”[26]. It was determined by the fact that, from the point of view of Marxism, ownership is a definite form of public relations as for appropriation and possession of material wealth.

Ownership was characterized by the presence of such person’s authority over a thing that was recognized by society and regulated by social norms. The owner disposed of the thing by his authority, in his interests. For him, the thing is his, for non-owners – not theirs. Since the

[24] Неклюдов Н. А. Руководство к Особенной части русского уголовного права / Н. А. Неклюдов. – Санкт-Петербург, 1876. – Т. 2. – 564 с., с.1

[25] Замечания на проект Особенной части Уголовного уложения / Сост. членами Санкт-Петербургского Замечания на проект Особенной части Уголовного уложения / сост. членами Санкт-Петербургского юридического общества: В. Д. Спасовичем, С. А. Андреевским, Г. В. Гантовером, А. А. Герке, Е. И. Утиным. – Санкт-Петербург, 1887. – С. 3.

[26] Жалинский А. Э. О материальной стороне преступления / А. Э. Жалинский // Уголовное право. – 2003. – № 3. – С. 29.

authority of the person (the owner) over the thing is impossible without the fact that other persons (who are not the owners of the thing) treated it as someone else, property was understood as relations between people about things. On one side is the owner who treats things as his personal, on the other – non-owners, that is, all other persons who are obliged to treat it as someone else, therefore, they must refrain from any infringements on someone else's thing and at the will of the owner to have this thing.

The Soviet criminal legal policy in the field of ownership protection was aimed at protecting not ownership relations, but the procedure of property use. The norms of the Criminal Code consolidated this position, recognizing not ownership, but property relations as the object of their protection. The concept of property crimes proceeded from the fact that a person committed a crime violated the subjective rights of citizens to things where the subject matter of such infringements was someone else's movable property in the form of physical things. Later on, other objects of legal protection were also distinguished: a) ownership rights; b) property rights; c) "property as a whole". The concept of "property as a whole" was considered on the one hand as a set of property rights, on the other hand, as a set of values that the subject has[27] [28].

Representatives of the Soviet school distinguished in ownership "two main abstract aspects: economic and legal"[29]. Separate scholars of Soviet criminal law understood under the ownership production relations, whose members distribute material goods, appropriates means of production and products of labor[30] [31] [32] [33] [34], namely, in general, they assigned economic and legal content [35] [36] to the ownership, where "economic" means the

[27] Клепицкий И. А. Собственность и имущество в уголовном праве / И. А. Клепицкий // Государство и право. – 1997. – №. 5. – С. 75

[28] Тюнин В. И. Преступления экономические в Уголовном уложении 1903 года / В. И. Тююнин // Правоведение. – 2000. – № 2. – С. 235–243.

[29] Пашуканис Е. Б. Избр. произведения по общей теории права и государства / Е. Б. Пашуканис. – Москва, 1980. – С. 110.

[30] Пинаев А. А. Уголовно-правовая борьба с хищениями / А. А. Пинаев. – Минск, 1975. – С. 13.

[31] Владимиров В. А. Ответственность за корыстные посягательства на социалистическую собственность / В. А. Владимиров, Ю. И. Ляпунов. – Москва, 1986. – С. 10.

[32] Тенчов Э. С. Квалификация преступлений против собственности / Э. С. Тенчов. – Иваново, 1981. – С. 5.

[33] Советское уголовное право. Особенная часть : учебник / под ред. П. И. Гришаева, Б. В. Здравомыслова. – Москва, 1988. – С. 100.

[34] Курс уголовного права : учебник : в 5 т. / под ред. Г. Н. Борзенкова, В.С. Комиссарова. – Москва, 2002. – Т. 3. Особенная часть. – С. 387.

[35] Дуюнов В. К Комментарий к Уголовному кодексу Российской Федерации (Постатейный) / В. К. Дуюнов ; отв. ред. JI. JI. Кругликов. – Москва, 2005. – 300 с.

actual, and “legal” is a legal acquisition of property by a particular person As a result, the ownership was never recognized by a criminal law science in the status of an independent object of protection.

With the development of economic turnover, ownership relations have become much more complicated. There was a new look at the acts that caused property damage, but did not fall under the category of “crimes against ownership”, but the above did not lead to a revision of the main definitions.

Modern national law science still continues to feel the powerful influence of Soviet legal ideology. Many legal concepts (including the concept of ownership protection) are still living in Ukrainian legal science. We believe that these theories and concepts can not find a place in the legal theory of the country, which proclaimed itself a democratic, law-governed and social state, therefore, the revision and formation of new modern approaches are essential.

In the state proclaiming the protection of ownership, economic (ownership) and legal (ownership right) meaning of ownership should not be separated. They exist in an inseparable unity [37]. Today, most countries of the world adhere to this concept.

One can find a proof of the above in the Civil Code of France in Article 544, where the following definition is given: «La propriete est le droit de jour et disposer des choses...» (Ownership right is the right to use and dispose of things...) [38]. The term of «La propriete» can be translated as both “ownership” and “ownership right”[39].

The same approach can be seen in civil law of Spain. Article 348 of the Civil Code of Spain defines the ownership right as follows: «La propriedad es el derecho de gozar в diesponer de una cosa...» (The ownership is a right to use and dispose of a thing...” [40]. The term of «La propriedad» can be translated as “ownership” and “ownership right” [41].

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[36] Лопашенко Н. А. Преступления в сфере экономики. Авторский комментарий к уголовному закону (Раздел VIII УК РФ) / Н. А. Лопашенко. – Москва, 2006. – 680 с.

[37] Пацурківський Ю.П. Основні підходи до визначення поняття та природи власності в цивільних правовідносинах Науковий вісник Чернівецького університету. 2013. Випуск 682. Правознавство., С. 60-64.

[38] Code civil. Titre 11-De la propriete [Electronic resource]. – Mode of access: http://www.civilites.com/cctv/L2T2C1.htm.

[39] Великий французько-український словник «Larousse»: Близько 420000 одиниць перекладу, слів та словосполучень / Бусел В.; Перун, 2011. – 1504 с., с. 680.

[40] Codigo civil (espanol). Ed. Aranzadi. – Pamplona, 1998. – 162 с.

[41] Іспансько-український, українсько-іспанський словник + граматика: 70000 слів. Автор-укладач: ОльгаМазура. – Донецьк: ГлоріяТрейд, 2009., с. 410.

In the Civil Code of Argentine they use the following term to define ownership right «El dominio»: «Art. 1882. El dominio es el derecho real que otorga todas facultades de usar, gozar в disponer de una cosa...» (Ownership right is a material right giving all powers on possession, use and disposal of a thing...)[42]. The term «El dominio» is translated as power, authority, and possession[43] [44].

The identical conclusion can be made from civil-legal norms of Italy. The third book of the Civil Code contains norms dedicated to the ownership right[45]. The term «la proprieta» is translated as "ownership", and "ownership right"[46].

Civil law of California and Quebec province do not distinguish the ownership and ownership right as well. According to Article 654 of the Civil Code of California the ownership right can be understood as follows: «The ownership of a thing is the right of one or more persons to possess and use it to the exlusion of others»[47]. The same norm is contained in Article 947 of the Civil Code of Quebec: «Ownership is the right to use, enjoy and dispose of property fully and freely...»[48]. The terms of «ownership» and «property»[49] do not correspond to Ukrainian concept of ownership[50]. Such approach can be found in the Codes of Portugal (Article 1305) and Switzerland (Article 641).

Article 1 of the first protocol to the European Convention has the following: "Every natural and legal entity has the right to the peaceful possession of his property. No one can be deprived of his property except in the public interest and subject to the conditions provided for by law and by the general principles of international law". Protocol № 11 to the Convention was amended in the article mentioned which obtained the

[42] Proyecto de codigo civil de 1998 (de la Republica Argentina) [Electronic resource]. – Mode of access: rittp//alterini/org/civil.htm.

[43] Іспансько-український, українсько-іспанськийсловник + граматика: 70000 слів. Автор-укладач: ОльгаМазура. – Донецьк: ГлоріяТрейд, 2009., с. 174.

[44] Латинсько–український словник / Мирослав Трофимук, Олександра Трофимук – Львів: Вид-во ЛБА, 2001., с. 225.

[45] Codice Civile Italiano R. D. 16 marzo 1942, n. 262 Approvazione del testo del Codice Civile (Pubblicato nella edizione straordinaria della Gazzetta Ufficiale, n. 79 del 4 aprile 1942). – P. 136.

[46] Словникіталійсько-російсько-український, українсько-російсько-італійський / Уклад. КатеринаЗоленкова, ОленаЗоленкова, ДієгоРудзанте. – Тернопіль: Богдан, 2008., с. 368.

[47] Civil code of California [Electronic resource]. – Mode of access: http://www.leginfo.ca.gov./cgi-bin/displeycode.

[48] Civil code of Quebec [Electronic resource]. – Mode of access: www.lexum.umontreal.ca/ccq/en/14/t2/c1.

[49] Англо-українськийсловник– EnglishUkrainian Dictionary. Близько 120000 слів: у 2-х томах / Уклад. М. І. Балла. – Київ: Освіта, 1996., с. 788.

[50] Шимон С. І. Майнові права в контексті сучасних концепцій права власності у цивілістиці / С. І. Шимон // Часопис Київського університету права. – 2012. – С. 192–195, с. 192.

name of «protection of property», and its content in the official translation obtained quite a different wording: “Every natural and legal entity has the right to the peaceful possession of his property. No one can be deprived of his ownership…” At the same time in English text of the Convention the following formulation is used: “Every natural or legal person is entitled to the peaceful enjoyment of his *possessions*. No one shall be deprived of his *possessions* except in the public interest and subject to the conditions provided for by law and by the general principles of international law” [51]. So, the difference in terms exists only in Ukrainian translation.

On the basis of this we can assume that in civil law and legislation in many countries of the world there is no clear distinction between ownership and ownership rights. The European doctrine puts the concept of “ownership right” in the term of “ownership” as if it involves an understanding of “ownership right”. Hence, ownership is understood in a broad sense.

Analyzing the practice of the European Court in the context of the European Convention, it can be seen that the concept of “ownership” is constantly expanding. This is undoubtedly supported by the position of the European Court, which consistently repeats that “ownership” in the sense of the Convention and the Protocol to it is an autonomous phenomenon which in no way is connected with its national understanding and has an interpretation independent of the national[52].

Today, Ukraine has come close to the need to adapt the current legislation to the European Union (EU) norms. The development of criminal legal policy and the harmonization of Ukrainian legislation, in particular with regard to criminal legal policy as for crimes against ownership, with the basic principles of EU law is a necessary element in this field.

Modern national science of civil law treats property in two ways: in the narrow one as a set of things and in the broader one as a set of things, property rights and obligations. This approach led to the fact that, in relation to Section 6 of the Special Part of the Criminal Code of Ukraine in the concept of ownership, a lawmaker introduced an ambiguous approach. In the case of understanding in the broad sense, it is directly

[51] Protocol 1 to the ECHR [Electronic resource]. – Mode of access: http://echr-online.info/right-to-property-article-1-of-protocol-1-to-the-echr/introduction/

[52] Мірошниченко О. А. Право власності у розумінні Європейського суду з прав людини (загальна характеристика) [Електронний ресурс] / О. А. Мірошниченко. – Режим доступу: file:///C:/Users/SZ740/Downloads/FP_index.htm_2013_2_57.pdf

enshrined in the disposition of the articles (Article 190 of the Criminal Code of Ukraine defines not only property but also the right to it). In the dispositions of other articles (Articles 185, 186, 187 of the Criminal Code of Ukraine), a lawmaker does not make any instructions regarding extended interpretation, so the concept of ownership in the narrow sense should be used. This causes the main problems of qualification.

Now, as never before, there is an urgent need to revise, improve and formulate a new approach to a universal, inter-integral concept of ownership, which does not oppress existing and emerging relations, but can cover as much as possible their diversity. Determining the concept of ownership one should be based on the features of protection, used by criminal legal relations, etc. If absolute protection and resistance to infringement from the third parties can be considered primary, then objects of ownership should be all objects that society wants and can defend by criminal legal means. Consolidating the ownership as an object of protection from criminal infringements can cover both the static state (refraining from unlawful actions) and the active behavior of subjects (use of right, fulfillment of obligations).

This in no way reduces the role of other elements (components). However, as in each system (and the criminal legal policy as for counteraction to crimes against ownership is an appropriate system characterized by all the features of the system), something must be the basic, determinant, so to speak, the driving force. In this system, the concept of ownership fulfills such function.

An analysis of conceptions of understanding the concepts as well as content of ownership, studied by us, allows making some important conclusions. Ownership is an autonomous phenomenon that should be interpreted independently of its national understanding[53] and includes three components: the first one is the everyday (social) perception at the level of common sense, where ownership is something (material) belonging to anyone. The second one is legal, where ownership includes property, property rights and ownership right. The third one is economic, and more precisely, political-economic, as a system category, where property is not the person's relation to any object, but the relations between people regarding the appropriation (alienation) of this object.

[53] Мірошниченко О. А. Право власності у розумінні Європейського суду з прав людини (загальна характеристика) [Електронний ресурс] / О. А. Мірошниченко. – Режим доступу: file:///C:/Users/SZ740/Downloads/FP_index.htm_2013_2_57.pdf

Moreover, appropriation and alienation are categories, that express the objective contradiction between the two parties of the content of ownership, and therefore with the elimination of alienation the appropriation is eliminated and, accordingly, the relations of ownership themselves[54]. In all three components there are criminal legal features[55]: in the first case, the ownership appears as a subject of a criminal infringement; the second and third ones are the object on which the crime is directed.

Proceeding from the broad interpretation of the concept of ownership, it is reasonable to understand under the object of criminal-legal policy as for counteraction to crimes against ownership the public relations that form the state of safety from:

1) Socially dangerous infringements on property;

2) Socially dangerous infringements on property rights;

3) Socially dangerous infringements on ownership right.

These objects should be reflected in the norms of Section VI of the Special Part of the Criminal Code of Ukraine, taking into account the trends in the development of modern social life, which determines the necessity of extending the regime of ownership to intangible objects as well.

The proof of the above can be found in the rational logic of modern thinking and economic development of mankind. This leads to the necessity to revise and modernize the legal concept of "a thing". In our opinion, the national civil law is behind the requirements of the present. The time has passed when under the "things" people understood material objects that literally surrounded a person. The development of society (first of all, its technical progress) has led to the fact that the interpretation of the concept of the subject matter of crimes against ownership as material objects of the outside world restricts this category. In some cases, the crime may also be directed to "intangible" benefit.

The American researcher Jeremy Rifkin in "The Age of Access" notes: firstly, real estate is devalued from the point of view of its functional purpose; and secondly, impressions (a paid-for-experience) are becoming goods in addition to material objects (things). Those that are

[54] Никитин А.М. Криминологические проблемы развития отношений собственности при переходе к рынку [Электронный ресурс]: Дис... .д-ра юрид. наук:12.00.08. – М. : РГБ, 2003. – 365 с., с. 37.

[55] ЖалинскийА.Э.О соотношении уголовного и гражданского права в сфере экономики // Государство и право. 1999. – № 12. –С. 47-52.

considered prestigious and commercially replicable: exotic life-threatening travels or a club card that provides access to the "limited circle" are demonstrative "goods" of the modern economy; thirdly, the reorientation of the economy described above leads to a shift in the emphasis in legal capacity of the owner – from legal capacity of possession prevailing before to legal capacity of use finding its manifestation in access. It is no coincidence that the book was called "Access – Das Verschwinden des Eigentums" in the German translation, since ownership of material benefits, that is, ownership in its classical sense is gradually disappearing[56].

"Unsubstantial" property is considered as an object of ownership right in foreign legal systems; in particular, such view extends to the rights to industrial ownership objects, the rights to objects of "financial and commercial ownership" (right to claim money, bonds, bills, checks, shares, bills of lading, etc.)[57]. In the countries of the Anglo-American legal system, the objects of material legal relations, along with traditional things, include so-called "things on request": monetary obligations; negotiable documents; securities, shares, bonds; copyright; patent rights; trademarks etc.

Even today national court practice considers crimes, the subject of which is, for example, non-cash money as free withdrawal of someone else's property. The lawmaker also (although partly) supported the above-stated position by consolidating the norms aimed at electric power protection in the Criminal Code (Article 188-1 of the Criminal Code of Ukraine). However, many issues still require improvement and regulatory consolidation.

The above mentioned is definitely being actualized due to the fact that today the role of ownership is changing. Information ownership plays a special role. The world community has entered a new era – the era of information society. Today, a daily life of mankind depends to a certain extent on telecommunication technologies used in almost all domains of human activity (energy, water supply, finance, trade, science, education, etc.).

[56] Войниканис Е.А., Якушев М.В. Информация. Собственность. Интернет : традиция и новеллы в современном праве. – М.: Волтерс Клувер. – 2004. – 146 с., с. 24-39.

[57] Гражданское и торговое право зарубежных государств. Учебник: В 2-х томах. Т. 1 / Буднева Г. Н., Васильев Е. А., Грибанов А. В., Зайцева В. В., и др.; Отв. ред.: Васильев Е. А., Комаров А. С. – 4-е изд., перераб. и доп. – М.: Международные отношения, 2006. – 560 с. – С. 314–315.

With the development of information space, it is necessary to intensify the efforts of the society to protect it from criminal infringements, a set of which already has its own, well-known worldwide name – cybercrime. It has become widespread and under the present conditions it constitutes one of the most dangerous threats of Ukrainian society. The rapid development of telecommunications and global computer networks has created conditions facilitating the commission of crimes against ownership and form new compositions. Criminals are increasingly using new ways to infect computers with dangerous programs which assist in obtaining criminal profits.

According to the NCR Report (Norton Cybercrime Report), the number of victims of cybercrime in 2012 was 341 million, and in 2015 – 594 million people, therefore, these figures increase annually. About 70% of Internet users at least once faced with fraud in the network, and at least 10% of them, suffered from phone frauds[58].

Today, in our opinion, most of the crimes against ownership provided for in Section VI of the Special Part of the Criminal Code of Ukraine may be committed by using harmful computer programs and software and hardware connected to the computer network. The exception is only crimes, the way of which is connected with the direct contact of the offender with the victims, as well as a significant part of crimes, where only materialized property can be the subject. Due to the fact that crimes against ownership are committed using information and communication technologies, they do not change the object of their infringement, but there is an attachment of an additional object in the form of relations in the field of information technology.

The possibility of the existence of such object itself is rather disputable, at the same time, it is obvious that the use of modern computer technologies increases and qualitatively changes the social danger from crime. In this regard, the system of norms, consolidating crimes against ownership, needs to be improved, since it does not fully take into account modern cyber threats.

Offenses against ownership committed with the use of information and communication technologies are characterized by such feature as "mass nature", that is, the commission of a crime against a large and, as a rule, indefinite circle of victims. This leads to the fact that it is practically

[58] 2015 Internet Security Threat Report http://www.symantec.com/security_response/publications/whitepapers.jsp

impossible to accurately determine the amount of the damage, and sometimes, this amount is too small to bring to criminal liability. Thus, the question arises as to whether harm can be a sign of a crime that reflects the nature and extent of social danger? Definitely not.

Unlike information crimes, the main property of crimes against ownership committed with the use of computer networks is that the subject of the crime uses computer networks as tool or means of committing a crime. That is what adds to such crimes unique properties that are not typical of other infringements. Thus, the concept of crimes against ownership committed with the use of computer networks can be defined as a combination of criminal acts prohibited by law, the manner of which requires the mandatory use of such networks as a tool or means. In addition, the content of the object of these crimes may be different and not related to public relations that arise in the information field.

The impact of globalization in the field of criminal law is observed in all countries and applies to all elements of criminal policy: criminal legal science, criminal law, practice of its application, definition of ways and forms of fighting against crime, development of special prophylactic, preventive measures. However, the influence of globalization processes on these elements is diverse. Criminal legal regulation of various domains of life of the society and the state under the conditions of globalization can be considered from different sides, at different points of view, taking into account the content of criminal and legal provisions of the General and Special Parts, but necessarily within those elements that form criminal legal policy. This is the provisions of the criminal law science in the doctrine of crimes against ownership, on punishment and other measures to counteract crimes against ownership; this is the rule-making, legislative activity, the system and activities of law enforcement bodies, etc.

Since the time of emergence of criminal law, its main questions have been and are – what to punish, who to punish and how to punish? It seems that in this triad, the first two problems tend to be influenced by the processes of globalization to the greatest extent. It is here that one can observe a certain universalization in the form of unification and harmonization. As for the institution of punishment, these questions are the prerogative of national criminal law. Although some issues of punishment are also considered internationally.

The globalization of economy is accompanied by the international nature of crimes against ownership; it generates organized transnational crime in this field. Transnational organized crime groups, interacting with

local criminal elements, lead to an increase in a number of different types of crimes against ownership at the local level. Accordingly, crime, motivation and forms of unlawful infringement on ownership have changed.

For the successful development of a law-governed, democratic state, the creation of an effective system of protection of ownership and, above all, by criminal legal means is crucial. Protection of ownership of one person inevitably reflected in the system of public relations of ownership and of the state as a whole. On the contrary, lack of a state criminal legal policy to counteract crimes against ownership causes a rise in social tension, resulting in a consistently high level of such infringements. Therefore, the leading idea of criminal legal policy as for counteraction to crimes against ownership is the formation and implementation of norms for the protection of ownership from socially dangerous infringements by means of substantial criminal law.

CONCLUSIONS

The criminal legal policy as for counteraction to crimes against ownership is an independent direction of criminal legal policy of Ukraine, which should cover all directions of the latter in order to achieve a state of complete protection and safety of ownership by criminal legal means.

Taking into account the properties of ownership as the object of criminal legal policy as for counteraction to crimes against ownership, as well as the properties of its components, the doctrinal level of criminal legal policy as for counteraction to crimes against ownership constitutes a teaching of the basic laws, tactics and strategies of securing a positive dynamics of protection of ownership from socially dangerous infringements by means of substantial criminal law. It should provide a general influence on the formation of other levels of criminal legal policy as for to counteraction to crimes against ownership, as well as properties, to be their scientific basis, to implement successful achievements of other levels, including them in the doctrine of criminal law and law in general.

SUMMARY

The present state of scientific development of criminal legal policy is analyzed. It is noted that taking into account commitment to adapt Ukrainian legal system to the European Union legal system, this process should be initiated, first of all, by the improvement of corresponding legal structures within the national legal theory. The urgency and necessity of

revision of doctrinal provisions of the criminal legal policy as for counteraction to crimes against ownership is substantiated.

Key words: ownership, criminal legal policy, counteraction to crimes, crimes against ownership.

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Information about the author:
Dorokhina Yu. A.
Doctor in Law, Assistant Professor,
Professor at the Department of Special Legal Disciplines
of the Educational-Scientific Humanitarian Institute
of the V. I. Vernadsky Taurida National University

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INTERNATIONAL LEGAL PROTECTION OF PUBLIC PROPERTY RELATIONS: PRACTICAL EXPERIENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Zadyraka N. Yu.

INTRODUCTION

Today, the practice of relation fulfillment in the field of public property use shows exhaustibility of resources, the possibility of system functioning "by inertia" without any systematic and proper legal regulation, that is why it is necessary to create conditions for legitimate, effective and rational use of public property taking into account public interest.

Pragmatism causes rational and effective use of public property. It is reasonable to be guided by democratic principles and pragmatic psychology of public administration subjects and other participants of public property relations during implementation of the tools of public administration activity.

"Three-stage test" in relation to public property use is implemented according to principles of legitimacy, legitimate goal in the interests of democratic society and proportionality (fair balance of interests).

Social dimension of everyday life of the state and society, in particular, in public property use [1], enshrined in Art. 1, 3, 13, 14 of the Constitution of Ukraine, can be implemented in practice with the view to pragmatic theory of handling and evaluation. It is possible under the condition of dynamic interaction of social-state sector concerning public property use taking into account the experience of the past.

[1] 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.

1. Peculiarities of "Three-Stage Test" Implementation in the Public Property Use

Depending on regime characteristics, "three-stage" test covers the following types of public property of international, national and local purpose having natural or artificial origins[2]:

1) Closed regime of use: weapons, military machines and military suppliers;

2) Restricted regime of use: gas transportation and pipelines infrastructure, special communication means;

3) General regime of use:

– Property of international significance of natural (such as the Carpathian Mountains, the Black Sea and its water area) or artificial origin (UNESCO World Heritage sites established by the Convention for the Protection of the World Cultural and Natural Heritage[3]);

– Property of national significance of natural (landscape parks, reserves) or artificial origin (museum, memorial complexes) for the purpose of achieving public interest, meeting the legal needs of interests of persons who legally live within a particular country;

– Property of general use of local purpose (air, water, railways, motorways; land owned by territorial communities, property of state and communal enterprises, institutions, organizations, property that provides functioning of public administration subjects, public money, buildings and public premises.

As for fulfillment of legal regimes of the public property types mentioned, then in view of public interest, the principle of legitimate goal is associated with the necessity of interest consideration, in particular, in relation to supervision of property use according to common interests. The legitimate goal in view of public interest may require less than indemnification of full market property cost [4] (the decision in the case "James and others v. The United Kingdom"). In § 111 the European Court of Human Rights in the case "Beyeler v. Italy" consolidated the legal position about the limits of law intervention based on the legitimate goal

[2] Миронюк Р.В., Пищида В.М. Особливості розгляду спорів, пов'язаних з використанням та розпорядженням публічним майном: монографія. Дніпро: Дніпроп. держ. ун-т внутр. справ, 2018. С. 18–20.

[3] Конвенція про охорону всесвітнього культурного і природного спадку: Міжнародний документ, ратифікований Указом Президії Верховної Ради № 6673-XI від 04.10.1988 р. URL: https://zakon.rada.gov.ua/laws/show/995_089 (дата звернення: 04.04.2019).

[4] Справа «James and Others v. the United Kingdom»: рішення Європейського суду з прав людини від 21.02.1986 р. № 8793/79. URL: http://hudoc.echr.coe.int/eng?i=001-57507 (дата звернення: 04.04.2019).

and purposes of restrictions for which they are established [5]. In fact and by law the participants of public property relations are vested with freedom of discretion to make their decision which goal is legitimate.

Thus, the legitimate goal of public property relations under the "three-stage test" determines the necessity in establishment of mainly mixed, state-corporative economy, a key element of which must be a large multi-sector corporation[6]. Such development is possible by using a category of public functions, which, according to Petrov E. V. is the continuation of the chain of logically connected definitions: public law – public interest – public management – public administration – public functions[7].

Therefore, the existence of legitimate goal allows achieving primary goal of public property management. As O. V. Kuzmenko mentioned, the reasons, the conditions and the outcome of such activity manifests itself in the system of coordinated mechanism of supervision, generalization of official positions and organizational units, establishment of generalized indexes of effectiveness and in proper mutual agreement[8]. In such a way the public administration in public property relations obtains a possibility to satisfy public interest taking into account common interest.

"Public interest" category is a fundamental reference point in establishment of goal legitimacy of public property use. For example, in the case of "Former King of Greece and others v. Greece" the European Court of Human Rights detected the following circumstances of the case. The applicants, members of the royal family, argued that the legislative measure deprived them of ownership of certain lands in Greece. The Government argued that legitimate interests of the state are in the need to protect forests and archaeological sites within these estates. An additional argument was that the disputed legislation was associated with a great public interest in preserving the constitutional status of the country as a republic. The European Court of Human Rights noted that there was not any evidence to support the Government's argument regarding the need to

[5] Справа «Beyeler v. Italy»: рішення Європейського суду з прав людини від 05.01.2000 р. № 33202/96. URL: http://hudoc.echr.coe.int/eng?i=001-58832 (дата звернення: 04.04.2019).

[6] Публічна власність : проблеми теорії і практики: монографія / під заг. ред. В.А. Устименка ; НАН України, Ін-т економіко-правових досліджень. Чернігів: Десна Поліграф, 2014. С. 33.

[7] Петров Є.В. До питання про зміст категорії «публічна адміністрація». *Південноукраїнський правничий часопис*. 2012. № 3. С. 6–7.

[8] Кузьменко О.В. Правова детермінація поняття «публічне адміністрування». *Юридичний вісник. Повітряне і космічне право*. 2009. № 3. С. 23.

protect forests or archaeological sites. On the other hand, in view of the fact that the disputed law was adopted almost 20 years after Greece became a republic, the state should regulate a clear set of obstacles for its status[9].

As a result, the public service model of the state is implemented, based on the organizational and legal coordinated methods of the public administration mechanism, defining the goals of the public administration activity and structure, as well as establishing rights, powers and ensuring the implementation of measures of liability[10].

We propose to be governed by "pure" understanding of legal regime through abstraction, exclusion and differentiation of moral, ethical, psychological, sociological, and other elements of the relations in public property use. Therefore, the concepts of "law" and "legal act" are identical for establishment of the content of legal norms as norms of obligation in accordance with the criteria of validity and effectiveness[11]. Effectiveness characterizes the legal regime of public property, in case of application of relevant legal norms regarding the actual public property use, which complies with these norms. The validity is related to the actual implementation of legal regime. At the same time, this legal regime is objectively valid, when the use of public property, which it sets, in fact, at least partially corresponds to the regime characteristics of public property.

We should specify that Article 1 of Protocol № 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms establishes three individual rules for property use[12]. Thus, the first rule, having a general character, indicates the principle of peaceful property use. The above rule is set out in the first sentence of the first paragraph of Article 1 of Protocol № 1. The second rule regulates the procedure for deprivation of property under prescribed conditions. This approach is set out in the second sentence of the same paragraph. The third rule stipulates that states have the right, among other things, to control the property use

[9] Справа «Former King of Greece and Others v. Greece»: рішення Європейського суду з прав людини від 23.11.2000 р. № 25701/94. URL: http://hudoc.echr.coe.int/eng?i=001-59051 (дата звернення: 04.04.2019).

[10] Легеза Ю.О. Завдання та функції публічного управління у сфері використання природних ресурсів. *Науковий вісник Міжнародного гуманітарного університету*. 2017. Вип. 26. С. 20 (Серія: Юриспруденція).

[11] Ковтонюк А.М. Ганс Кельзен і його чиста теорія права. *Університетські наукові записки*. 2007. № 1. С. 29–30.

[12] Конвенція про захист прав людини та основоположних свобод: Міжнародний документ від 04.11.1950 р. Офіційний вісник України. 2006. № 32. С. 270.

in accordance with common interests by executing such laws as they deem necessary for this purpose. This rule is contained in the second paragraph.

The approach of the European Court of Human Rights in dealing with property rights cases is not always the same. For example, after clarifying the fact that Article 1 of Protocol № 1 is applicable, the court sometimes determines whether this measure is a deprivation of property or rather falls under the control of use[13] (the decision in the case "Suljagic v. Bosnia and Herzegovina"). In other cases, the European Court of Human Rights does not make this differentiation, but claims that it considers a certain measure, taking into account the provisions of Article 1, Protocol № 1 and the principles governing the property right[14] (the decisions in the cases "Beyeler v. Italy", § 106; «Broniowski v. Poland", § 136).

A further illustration of what might constitute an asset and, consequently, "property" is the case of "Pressos Compania Naviera SA and others v. Belgium"[15]. In this case, the applicants were the owners of ships whose ships were involved in collisions in the territorial waters of Belgium. The collision occurred because of the negligence of Belgian marine pilots, for which, according to Belgian law, the state is responsible. However, in August 1988, the Belgian legislative body adopted a law that exempts the state from liability with retrospective effect. The applicants complained under Art. 1, Protocol № 1 that their right to property had been violated. The state argued that the applicants had no "property" within the meaning of this article. The court noted that claims for compensation were brought in compliance with Belgian tort law when the damage took place. Thus, such requirement was an asset and was considered as "possession"[16]. Based on court case law before the adoption of new legislation, the applicants could argue that the national courts could make decisions in their favor.

[13] Справа «Suljagic v. Bosnia and Herzegovina»: рішення Європейського суду з прав людини від 03.02.2010 р. № 27912/02. URL: http://hudoc.echr.coe.int/eng?i=001-95564 (дата звернення: 04.04.2019).

[14] Справа «Beyeler v. Italy»: рішення Європейського суду з прав людини від 05.01.2000 р. № 33202/96. URL: http://hudoc.echr.coe.int/eng?i=001-58832 (дата звернення: 04.04.2019).; Справа «Broniowski v. Poland»: рішення Європейського суду з прав людини від 28.09.2005 р. № 31443/96. URL: http://hudoc.echr.coe.int/eng?i=001-70326 (дата звернення: 04.04.2019).

[15] Справа «Pressos Compania Naviera S.A. and Others v. Belgium»: рішення Європейського суду з прав людини від 20.11.1995 р. № 17849/91. URL: http://hudoc.echr.coe.int/eng?i=001-58056 (дата звернення: 04.04.2019).

[16] Справа «Pressos Compania Naviera S.A. and Others v. Belgium»: рішення Європейського суду з прав людини від 20.11.1995 р. № 17849/91. URL: http://hudoc.echr.coe.int/eng?i=001-58056 (дата звернення: 04.04.2019).

Considering the European practice in relation to peculiarities of the public property use by the criterion of public interest in detail, we should note that Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, first of all, stipulates the provisions of "property use"[17]. The use can be defined as the ability to use public property according to its purpose. As an example of the case, "Sporrong and Lönnroth v. Sweden", it was recognized that prohibitions on construction hindered the property use[18]. At the same time, a complete set of principles for the property use can not be identified. So, the owner may be legally obliged to perform certain actions in relation to public property.

So, the rights to public property can not be considered as absolute. The prohibition on ownership of certain things is another way of introducing the principles of exercising property rights. This approach was adopted in the case "Handyside v. The United Kingdom", where confiscation was permitted under the Convention on the grounds, that things are prohibited by law and constitute danger to the common interest[19]. According to the general rule, the public property use gives the owner the exclusive right to his property. For example, in the case "Kleine Staarman v. The Netherlands", it was established that the owner had to have an identified, pretending and, therefore, exclusive claim of joint capital to obtain the right to possession. The lack of exclusivity ("identified and claim share") may be a ground for refusal to satisfy claims[20].

The right to dispose of public property can be regarded as a traditional and fundamental aspect of property rights. This right allows the owner of public property to enter into legal relations with other persons, regardless of the form of relations: sale, lease, and usufruct. Such interchangeability can be considered as the most important condition of economic efficiency and justice. The right to dispose of property means that such property is an asset. The criterion of economic value may be

[17] Конвенція про захист прав людини та основоположних свобод: Міжнародний документ від 04.11.1950 р. Офіційний вісник України. 2006. № 32. С. 270.

[18] Справа «Sporrong and Lönnroth v. Sweden»: рішення Європейського суду з прав людини від 23.09.1982 р. №№ 7151/75; 7152/75. URL: http://hudoc.echr.coe.int/eng?i=001-57580 (дата звернення: 04.04.2019).

[19] Справа «Handyside v. the United Kingdom»: рішення Європейського суду з прав людини від 07.12.1976 р. № 5493/72. URL: http://hudoc.echr.coe.int/eng?i=001-57499 (дата звернення: 04.04.2019).

[20] Справа «Kleine Staarman v. the Netherlands»: рішення Європейського суду з прав людини від 16.05.1985 р. № 10503/83. URL: https://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=001-73885&filename=F.P.J.M.%20KLEINE%20STAARMAN%20v.%20the%20NETHERLANDS.pdf (дата звернення: 04.04.2019).

used to establish ownership presence. In particular, in the case "Bramelid and Malmström v. Sweden", it was examined whether the shares of company were in ownership. It has been determined that the company's share is a complex category: it confirms that the owner owns the rights (especially the right to vote); is an indirect claim to the assets of the company[21]. Thus, the shares have an economic value because they are the property.

Public interest in public property relations determines rules for the peaceful property use. As an example in the case "Sporrong and Lönnroth v. Sweden", it was recognized that the availability of permits for expropriation led to reduction in the selling price of the property considered. However, the applicants never ceased to be the owners, and they could always dispose of it. Thus, the general rule for guaranteeing the peaceful possession of property was implemented[22].

When a person is deprived of a public property or rights to it, a category of public interest is also used to justify the legality and appropriateness of the said actions. Thus, in the case "Papamichalopoulos and others v. Greece", the applicants' valuable land was seized by the state in 1967 during the dictatorial period and transferred to the Navy, which then created a naval base in place. Since, after this time, the applicants could not effectively use their property or alienate it, the state was prosecuted for actual expropriation[23]. In the case "Brumărescu v. Romania", the applicant, based the decision of the court of first instance in his favor, returned the pre-nationalized property into his ownership. Later on, the Supreme Court revoked the decision of the court of first instance, as a result of which the applicant no longer had the right to use this property. The European Court of Human Rights, when considering and resolving the dispute over the lawfulness of the property possession within the meaning of Article 1 of Protocol № 1, was guided by the second rule of this provision[24].

[21] Справа «Lars Bramelid and Anne Marie Malmström against Sweden»: рішення Комітету Міністрів від 25.10.1984 р. №№ 8588/79; 8589/79. URL: https://hudoc.echr.coe.int/eng# {"tabview":["document"], "itemid":["001-49253"]} (дата звернення: 04.04.2019).

[22] Справа «Sporrong and Lönnroth v. Sweden»: рішення Європейського суду з прав людини від 23.09.1982 р. №№ 7151/75; 7152/75. URL: http://hudoc.echr.coe.int/eng?i=001-57580 (дата звернення: 04.04.2019).

[23] Справа «Papamichalopoulos and Others v. Greece»: рішення Європейського суду з прав людини від 24.06.1993 р. № 14556/89. URL: http://hudoc.echr.coe.int/eng?i=001-57836 (дата звернення: 04.04.2019).

[24] Справа «Brumărescu v. Romania»: рішення Європейського суду з прав людини від 28.10.1999 р. № 28342/95. URL: http://hudoc.echr.coe.int/eng?i=001-58337 (дата звернення: 04.04.2019).

Public interest also manifests itself in relation to the supervision over the public property use. In the case "Mellacher and others v. Austria", it was stated that a measure to reduce the legal payments to property owners could be considered as the supervision over the property use in accordance with the recently adopted law[25]. For example, the case "Handyside v. The United Kingdom", it was established that the temporary seizure of property did not involve deprivation of property. Therefore, the third rule of Article 1 of Protocol №1 is applicable[26].

In fact, the supervision over the public property use should take place in the interest of society. Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that supervision concerns the property use[27]. In practice, this may relate to the right to dispose of property. Thus, restrictions on freedom of entry into contractual relations can be the supervision over the property use. Similarly, intervention in exclusivity is an intervention in the property use, and therefore, in property.

The case "Svenska Managamentgruppen AB v. Sweden" proves it. The applicant had property on the shore of the lake, which gave him the exclusive right to fishing. Later on the above mentioned right was canceled by law. It was acknowledged that this right could be considered as ownership and that its revocation was an intervention in property rights[28]. At the same time, such an intervention is not a deprivation of property, but it is supervision over the property use.

Taking into account the above mentioned positions on public interest in public property relations, it is important for their protection to be appropriate. First of all, there should be an optimal model of administrative justice that is consistent with public interest. Legal protection in order to ensure the exercise of human rights and freedoms must be carried out by an independent and competent authority. As a rule, in relations with the authorities such entity is a judicial authority, since

[25] Справа «Mellacher and Others v. Austria»: рішення Європейського суду з прав людини від 19.12.1989 р. №№ 10522/83; 11011/84; 11070/84. URL: http://hudoc.echr.coe.int/eng?i=001-57616 (дата звернення: 04.04.2019).

[26] Справа «Handyside v. the United Kingdom»: рішення Європейського суду з прав людини від 07.12.1976 р. № 5493/72. URL: http://hudoc.echr.coe.int/eng?i=001-57499 (дата звернення: 04.04.2019).

[27] Конвенція про захист прав людини та основоположних свобод: Міжнародний документ від 04.11.1950 р. *Офіційний вісник України*. 2006. № 32. С. 270.

[28] Справа «Svenska Managamentgruppen AB v. Sweden»: рішення Європейського суду з прав людини від 01.12.1985 р. № 11036/84. URL: https://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=001-72454&filename=SVENSKA%20MANAGEMENTGRUPPEN%20AB%20v.%20SWEDEN.pdf (дата звернення: 04.04.2019).

such a subject may influence the implementation of public administration responsibility for its activities.

Therefore, in functioning of the administrative justice national model in relation to public property, it is essential to consider the legitimacy and proportionality of restrictions when implementing the legal regime of public property, both from the point of view of supranational and national law. The provisions of "pure theory" by H. Kelsen are the corresponding law-enforcement and methodological reference point. In particular, it is about the perception of national legal systems and international law as the whole, a hierarchical system that goes back to the so-called Grundnor[29]. The fundamental factor of legitimacy is a category of democracy[30] that is, the reasonability of establishing and ensuring the democratic dimension of the legal regime implementation of public property. On this occasion, the criterion of the regime democratic nature is acceptable, analogically to the concept of democratic coup d'etat. Thus, Ozan O. Varol formulated the criteria relating to the legitimacy of power in general, as well as the compromise nature of interaction between the parties to the relations, the "transfer" of power[31].

According to the "three-stage test", a democratic dimension of the legal regime implementation of public property is impossible without clear establishment of boundaries for public administration activity. It is through organizational management, control and supervisory tools of public administration that one can optimize the model of public administration regarding the public property use, strengthen social dialogue and partnership, and increase the level of trust of the world community in Ukraine.

A key limiting factor for the public administration implementation in the implementation of legal regime of public property should be the principle of fair balance. Thus, the interests of a person who has suffered as a result of intervention in the rights to property must take into account the interests of the general public. Intervention should not impose excessive or disproportionate burden on a person[32]. In fact, there must be a balance between public and private interests in order to prevent arbitrary

[29] Kelsen H. General Theory of Law and State. Harvard: Harvard University Press. 2009. 516 p.

[30] D'Aspermont J. Responsibility for Coups d'Etat in International Law. *Tulane Journal of International and Comparative Law*. 2010. № 18. P. 45.

[31] Varol O.O. The Democratic Coup d'Etat. *Harvard International Law Journal*. 2012. № 53. P. 297.

[32] Справа «Valkov and Others v. Bulgaria»: рішення Європейського суду з прав людини від 25.10.2011 р. № 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05, 2041/05. URL: http://hudoc.echr.coe.int/eng?i=001-107157 (дата звернення: 04.04.2019).

interference that does not comply with the law. In the case "Jahn and others v. Germany, the European Court of Human Rights clearly stated that exceptional circumstances, such as the unique context of reunification of Germany, could justify the absence of any compensation to private law subjects as a result of intervention in their property rights[33].

The proportionality of restrictions for the public administration implementation during implementation of public property legal regime is manifested in compliance with the requirements of Article 1, Protocol № 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms[34].

An example might be the case "Hentrich v. France", in which the applicant had purchased the land, on which the state authorities subsequently wanted to exercise their priority right. The state argued that public interest in this case is to prevent tax evasion[35]. The European Court of Human Rights came to the conclusion that exemption by the state can be predictable, both arbitrary and selective. In the given circumstances of the case, the applicant experienced an individual and excessive burden which could be legitimate only if he was denied an effective appeal against the measure taken against him. Therefore, the fair balance was violated that had to be achieved between property right protection and requirements of public interest[36].

Accordingly, public interest in public property relations determines negative and positive obligations of the state. In accordance with § 37 of the European Court of Human Rights decision in the case "Carmel Saliba v. Malta" any intervention by a public administration subject in the right to peaceful possession of property should be legal[37]. That is, illegal intervention in the owner's property rights is absolutely unacceptable. In view of social justice, this can be achieved through the proper implementation of the public property legal regime and protection of violated, unrecognized or impaired rights, freedoms and legitimate

[33] Справа «Jahn and Others v. Germany»: рішення Європейського суду з прав людини від 30.06.2005 р. № 46720/99, 72203/01, 72552/01. URL: http://hudoc.echr.coe.int/eng?i=001-69560 (дата звернення: 04.04.2019).

[34] Справа «Scollo v. Italy»: рішення Європейського суду з прав людини від 28.09.1995 р. № 19133/91. URL: http://hudoc.echr.coe.int/eng?i=001-57936 (дата звернення: 04.04.2019).

[35] Справа «Hentrich v. France»: рішення Європейського суду з прав людини від 22.09.1994 р. № 13616/88. URL: http://hudoc.echr.coe.int/eng?i=001-57903 (дата звернення: 04.04.2019).

[36] Справа «Hentrich v. France»: рішення Європейського суду з прав людини від 22.09.1994 р. № 13616/88. URL: http://hudoc.echr.coe.int/eng?i=001-57903 (дата звернення: 04.04.2019).

[37] Справа «Carmel Saliba v. Malta»: рішення Європейського суду з прав людини від 29.11.2016 р. № 24221/13. URL: http://hudoc.echr.coe.int/eng?i=001-169057 (дата звернення: 04.04.2019).

interests. In view of public interest, it is necessary to create conditions for minimizing possible negative manifestations of illegal public property use or unlawful inaction of authorized subjects of public administration. We suggest personalizing the measures of liability taken against the offenders and specifying the penalties for delinquency. This can be achieved based on combination of enforcement power of law provisions with public opinion in order to maintain the state of public order and discipline.

2. Useful Result of Public Property Relation

In the theory of pragmatism W. James considers the category of "useful result" as "a state of mind"[38]. We propose to interpret this approach as a reference point for the establishment and development of relations concerning the use of public property, taking into account the ethical and moral principles of such relations, the attitude of public administration and subjects of private law to social reality. The proposed option of implementation of public property relations is implemented in order to ensure social welfare. According to S.S. Kravchenko, one can distinguish the following theoretical priorities of the philosophical movement of legal realism, based on the ideas of classical pragmatism[39]: power and economics in society; society's welfare; a practical approach to a durable result; a synthesis of legal philosophies.

It can be achieved through the well-established legal regime of public property. As N.V. Kovalenko explains, such regime appears as the main means by which the administrative-legal regulation is implemented, representing the form of state influence on certain domains of public relations, including the economy, in order to coordinate, correlate and eliminate discrepancies in public and private interests[40]. The public dimension of public property relations has a "vertical" nature, aimed at protecting, at first, public interest.

In pragmatic dimension, when formulating the criteria for institutionalization of the public property legal regime, it is necessary to take into account the social life realities of public property relations, based on which the management efficiency evaluation of such property is carried out. The reality of such criteria is manifested in their objectivity

[38] James W. What is Pragmatism?. / ed. by A. Blunden. USA: Harvard UP, 2005. P. 29.

[39] Кравченко С.С. Взаємозв'язок теорії правового реалізму і правового прагматизму у філософії США. *Актуальні проблеми держави і права*. 2011. Вип. 60. С. 475.

[40] Коваленко Н.В. Методологічні підходи до визначення поняття адміністративно-правового режиму. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2014. № 1. С. 174.

and independence in evaluating legal facts based on world-wide views, cultural characteristics, and experience in the relevant field of legal regulation. Namely, taking into account the categories of objectivity, factual assurance and cause and effect links of relations regarding the lawful use of public property during the establishment of powers of public administration subjects and users of public property, the autonomy of the legal status of participants in administrative legal relations regarding the use of public property and administrative -legal ways of protection in this field. Such systemic-structural links allow guaranteeing the effectiveness of public administration activities in the exercise of their powers, taking into account the legal regime of public property on the basis of unified standardization norms and rules of conduct.

In an instrumental dimension, public administration functions in relation to public property have an optimal alternative nature. It is about the reasonability of choosing an optimal way of using property from all available alternatives. At the same time, the probable results of the proposed choice are implemented in new social circumstances. When using public property, the behavior should be oriented towards a long-term relations taking into account a public interest, as well as previous experience in public administration. This process is influenced by the historical context, objective circumstances of public property relations, subjective convictions of persons with legitimate competence to use such property, the existence of liability institution of public administration subjects for torts in public property relations.

As for draft decisions at using public property, then pragmatism allows developing an optimal model of property use, given the potential practical consequences and direct actual current results. As J. Dewey explains, the pragmatic concept of the instrumental method is based on value dimensions, provided that it takes into account practical interest and subjective choice in order to transform undesirable, unfavorable, indefinite, problematic situation into a clear and desirable one for a person[41]. In particular, the standard of justification and legitimacy of public property use should be based on the criterion of effectiveness. It is worth supporting W. James' position that empiricism and rationalism are combined in pragmatism, provided that the experience has practical

[41] Скотний П.В. Економіко-теоретичне знання в методологічних рефлексіях прагматизму. *Науковий вісник Національного лісотехнічного університету України*. 2010. Вип. 20.12. С. 250.

consequences (the criterion of truth is something that "works" best and combines with the whole set of experience)[42].

Therefore, in order to determine the optimal and most favorable directions of using public administration activity tools in using public property, it will be appropriate to consider the category of usefulness. We agree with the scientific position of W. James that the practical value of true ideas originates from the practical value of their objects[43]. We suggest taking into account the possibility of achieving public interest, meeting the social life needs in rational and efficient use of public property. It is possible in the form of a purposeful, useful for the state and society implementation of public property relations under the conditions of adaptation to the current national economic situation.

As an example, the experience of the Federal Republic of Germany in relation to improving the procedure of public finance use may be relevant for implementation in Ukraine. It is about the possibility of using a privatization tool to increase revenues and reduce the expenses of state and local budgets. Thus, the German practice of law enforcement is guided by the general economic postulate that funds have a more productive potential when used by the subject of private law[44].

Key innovations should create conditions for the development of corporate transparency in public property use. Given the German experience for Ukraine, it is useful to create a state register that will cover international coverage data. Key innovations should create conditions for the development of corporate transparency in the use of public property. It is useful to create a state register that will cover international coverage data in Ukraine, taking into account the German experience for Ukraine[45]. Of course, it is necessary to ensure full access to data on public expenses and expenses of local self-government bodies, private law and delegated competency subjects that use public property. An appropriate tool for ensuring transparency is the Global registry of owners and other authorized entities on public property.

Note that in implementing public property relations, it is reasonable to take into account the rational sense of C. Peirce's conception on ways of using public property and "possible practical consequences". The

[42] Джеймс В. Прагматизм. Київ: Вид-во «Украина», 1995. С. 44.
[43] Джеймс В. Прагматизм. Київ: Вид-во «Украина», 1995. С. 101.
[44] Welfens P.J.J. Economic Aspects of German Unification: National and International Perspectives. Berlin: Springer Verlag, 1992. P. 245.
[45] Germany: Trend toward re-municipalisation of energy sector. URL: https://www.epsu.org/article/germany-trend-toward-re-municipalisation-energy-sector (дата звернення: 04.04.2019).

categories of existence, quality, attitude, ideas, and substance are used[46]. The above mentioned means that there is an abstract description of an effective model of person's behavior authorized to use public property.

Thus, the notion of existence is formed when relations on the use of public property arise, in particular, when applying the tools of public administration (ontological proposal). Then, the category of existence is transformed into a qualitative state of relations. That is, relations on the public property use are manifested both directly in the interaction of public administration with other subjects of public and private law, and with no regard to specific circumstances as for institutional characteristics of public property.

Along with that, we should note that often non-compliance with or violation of effectiveness of public property use takes place. For example, there may be torts regarding the use of public money to finance the activity of property of state and communal enterprises, institutions and organizations. The above situation is connected with violation of the obligation by public administration subject to ensure the implementation of the right, established in Art. 53 of the Constitution of Ukraine, to education[47], an integral element of which is the proper financing of educational institutions. It is about ensuring proper financing of educational institutions, when the receipt of specially allocated money is one of elements of education availability. It is carried out at the expense of the state and local budgets transferring to the specially allocated amount of money in the size of the financial standard to such an educational institution (taking into account the correction coefficients) of budgetary provision per one pupil who acquires a complete general secondary education[48].

It should be noted that in view of pragmatism it is important for the court to control decisions made on the basis of exercise of discretionary powers as effectively as possible[49] in disputes concerning the unlawful use of public property and restoration of social welfare (the decision in the case "Hasan and Chaush v. Bulgaria").

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[46] Пирс Ч.С. Избранные философские произведения / пер. с англ. К. Голубович и др. ; ред. Л. Макеева и др. Москва: Логос, 2000. С. 103.

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

[48] Постанова Верховного Суду у складі колегії суддів Касаційного адміністративного суду у справі № 442/8337/17 від 26.02.2019 р. URL: http://www.reyestr.court.gov.ua/Review/80167815 (дата звернення: 04.04.2019).

[49] Справа «Hasan and Chaush v. Bulgaria»: рішення Європейського суду з прав людини. № 30985/96. URL: http://hudoc.echr.coe.int/eng?i=001-58921 (дата звернення: 04.04.2019).

It is essential to regulate in the Code of Administrative Offences of Ukraine and in the Law of Ukraine "On Management of State-Owned Objects" in detail a procedure for bringing to the liability of public administration subjects for damage, illegal actions, negligence in relation to public property. It is necessary to take into account the fact that, as S. G. Stetsenko emphasized that administrative delictology should be included in the subject of administrative law[50]. According to T. O. Kolomoets, today, administrative-tort relations should belong to the subject of administrative law, since administrative-tort law is not vested with all necessary features of an independent branch of law[51]. Accordingly, in view of public interest for the proper performance of functions of the state and local self-government as well as other subjects of private law as for the use of public property, administrative and property liability measures should be applied.

Complex implementation of organizational, organizational-administrative, administrative, and economic means of influencing public property relations will allow realizing public interest in economically rational and legally legitimate use of national property of Ukraine, state resources and capital of territorial communities depending on the purpose of such property. Accordingly, it will be possible to focus on the result of public management activities in terms of maintaining welfare and national law and order, improving and increasing the efficiency of social production, ensuring social dialogue and increasing the investment attractiveness of public property activities.

It can be said that pragmatism determines rational and effective public property use. In such way, officials (officers) of public administration subjects are obliged to provide protection, fair and effective public property use only for implementation of competence provided by law, for prevention of damage. Therefore, public administration subjects' behavior should be guided by observance of anticipated effectiveness from property use, rational decision-making, prevention of excessive costs, as well as taking into account public interests and private goals of a person as a user of public property together with provision of social welfare.

[50] Стеценко С.Г. Сучасний погляд на предмет адміністративного права. *Публічне право*. 2016. № 1. С. 24–25.

[51] Коломоец Т.А. Предмет административного права: к вопросу поиска нового формата в современной украинской административно-правовой науке. *Административное право: развитие теоретических основ и модернизация законодательства*. 2013. Вып. 8. С. 118 (Серия: Юбилеи, конференции, форумы).

CONCLUSIONS

One can state that "three-stage test" allows achieving balance between public interest and private interests of persons used public property. This can be achieved in accordance with principles of legitimacy, legitimate goal in the interests of democratic society and proportionality in public property relations. Not less important is to provide preventive and punitive influence of liability of public administration subjects in public property relations. As a result, it is possible to enforce the legitimacy of public administration subjects' activity, support of public effect from penalties taking into account proportional reaction on torts, unlawfulness inaction etc.

Therefore, we suggest the following format of public property use in pragmatic dimension:

– Guaranteeing non-discriminatory use of public property by all authorized representatives of the relations: public administration, other subjects of public and private law;

– Establishing the boundaries of public administration discretion regarding public property and exceptions to the implementation of legal regimes of such property in view of social circumstances, usefulness category and optimal models of draft decisions when using public property;

– Guaranteeing effective means of protecting violated, unrecognized or impaired rights and legitimate interests, in particular, through the right to access to justice; maintaining the unity of legal positions in cases relating to public property that are in court consideration.

Pragmatism allows providing multidimensional nature and flexibility of relations of public property use. As a result, the conditions for mutually accepted and non-controversial decisions, implementation of proper instruments of public administration activities are used.

SUMMARY

The regime characteristics of types of public property of international, national and local purpose are specified. It is suggested focusing on "pure" understanding of legal regime through abstraction, exclusion and differentiation of moral, ethical, psychological, sociological, and other elements of the relations in public property use. It is justified that public interest exists in public property relations, first of all, in economic measures and it is aimed at achieving social justice and social dialog.

The article describes the peculiarities of pragmatism methodology implementation to provide rational and effective public property use. The author specifies that it is necessary to guarantee the improvement of ways and "possible practical outcomes" of public administration functions, in particular, practical implementation of draft decision in order to establish and develop the relations of public property use. The attention is drawn to the approaches of scientific school of pragmatism with the aim to formulate the mechanism of making mutually acceptable and non-controversial decisions, the implementation of proper tools of public administration activity.

The author draws attention to the fact that "three-stage test" allows reaching balance between public interest and private interest of people who use public property according to the principles of legitimacy, legitimate goal in the interest of democratic society and proportionality in public property relations. The practical experience of the European Court of Human Rights, in particular, in relation to rules and principles of peaceful use of public property is analyzed. It is proved that the supervision over public property use should take place in the interests of society.

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Information about the author:
Zadyraka N. Yu.
PhD in Law Science,
Associate Professor at the Administrative Law Department,
Faculty of Law, Taras Shevchenko National University of Kyiv

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THE PROBLEMS OF LEGAL REGULATION OF HUMAN RIGHTS AND FREEDOMS AT TEMPORARILY OCCUPIED TERRITORIES OF UKRAINE

Iliashko O. O.

INTRODUCTION

In the recent years constitutional human rights at the temporarily occupied territories have been in focus of lawyers and law scientists as well as the scientists of other branches of socio-humanitarian sciences. The interest in the subject of the present research is expressed through significance of functions performed by constitutional human rights at the temporarily occupied territories of Ukraine under the modern conditions.

The research of constitutional human rights nature at the occupied territories can be divided into types of knowledge according to subject belonging, as a result the sources of philosophical, theoretical as well as branch, inter-branch and applied orientation can be distinguished. In every individual case a scientist solves own research tasks based on peculiarities of the subject and the method of the research. However, they constitute a holistic, but diverse picture of one of constitutional human and civil rights and freedoms as a whole.

To establish inter-branch connections between individual types of scientific knowledge to use it effectively, to overcome inconsistency and gaps in research of certain aspects of constitutional human rights and freedoms at the temporarily occupied territories, one should strengthen a philosophical and methodological basis of scientific research, pay attention to the problems of understanding the phenomena essence, their legal nature, establishing the cause and effect relations, revealing the degree of possible and necessary in subjective right, determining criteria for determination of limits for freedom and justice.

In Ukraine the development of protection institution for constitutional human and civil rights and freedoms at the temporarily occupied territories is taking place in the context of global genesis of these rights and freedoms. For all the time constitutional human rights and freedoms at the temporarily occupied territories of Ukraine have been

enriched with positive achievements of international standards in the field of human rights. Taking into account sad events of 2014, Ukraine based on its historical experience and international experience builds up effective mechanisms of human rights protection at the temporarily occupied territories.

Taking into account significance of the institute for human rights protection at the temporarily occupied territories not only for Ukraine, but for all international community, it can be considered in two aspects:

1) As a legally separated set of legal norms governing constitutional relations in the field of human rights provision at the temporarily occupied territories;

2) A combination of legal ways and means for effective consolidation, provision, protection and exercise of human rights and freedoms at the temporarily occupied territories by special authorized state and international institutions implementing law policy in the field of human rights provision.

1. General State of Human Rights and Freedoms at the Temporarily Occupied Territories of Ukraine

The events of recent years in and around our country, the analysis of a national system of law shows that there are a number of urgent problems regarding the fundamental national values declared in the Constitution of Ukraine such as human life, health and safety, human rights and freedoms, the state and social order of the country, its sovereignty and territorial integrity, the development of a law-governed, democratic, and social state. All these problems have been manifested more clearly under the conditions of temporary seizure of part of Ukrainian lands by the Russian Federation. Therefore, the scientific awareness of the problems of constitutional human and civil rights and freedoms at the occupied territories of Ukraine is very urgent.

The list of human and civil rights and freedoms, enshrined in the Constitution and other legislation of Ukraine, is universally recognized for any law-governed state. The main problem is proper provision of their implementation, creation of effective state mechanisms for their protection. The achievement of this goal is complicated in those countries where socio-political and legal systems undergo significant transformations. The main object, to which radical economic, political,

social and spiritual transformations in our country are directed and determined by the strategic course of integration into the European and world democratic community, is a person, human interests, rights and freedoms.

The Constitution of Ukraine proclaimed the establishment and provision of human rights and freedoms as a main duty of the state and laid the basis for construction of such mechanism. Human rights and freedoms at the temporarily occupied territories of Ukraine are an integral part of the system of constitutional human and civil rights and freedoms.

Democratic transformations in all fields of society life require improvement of a legal system of Ukraine, its constitutional foundations as the legal basis for the systematic structural and organizational reform of public power, the system of state management, the establishment of priority national values, and the creation of a mechanism for the protection of human rights and freedoms. The need to clarify the problems, trends and prospects of the development of modern state studies also emphasizes the necessity for detailed comprehensive development of fundamental legal issues. An important task of modern historical science and jurisprudence is the substantial revision of the content, rethinking of national state-legal reality in the context of generally recognized democratic principles of functioning of the social and law-governed state, the development of a powerful tool for the provision and protection of human rights and freedoms[1].

Therefore, the priority of human interests, rights and freedoms has determined actualization of the need for legal provision of development in the humanitarian field. This is, first of all, the guarantee of fundamental human rights: to the safety of life, freedom and personal inviolability; to health and medical care; to free development of personality, respect for honor and dignity; for work and rest, social protection; to the freedom of creativity in all domains – social, scientific, technical, artistic, etc. It follows from here that creation of a law-governed society where the supremacy of law prevails, and human rights are desired, indisputable and guaranteed is the precondition for the formation of a democratic, law-governed, and social state. And only when human rights become existing reality, namely, the urgent need of every person, an integral feature of

[1] Правова система України: історія, стан та перспективи : у 5 т. Х. : Право, 2008. – Т. 2 : Конституційні засади правової системи України і проблеми її вдосконалення / за заг. ред. Ю. П. Битяка. Х. : Право, 2008. 576 с.

their sense of justice, a factor of the attitude to environment of both individual person and power institutions and its bodies, a truly law-governed state can be built. Therefore, the main condition for the functioning of civil society and law-governed state is precisely a person, a personality who embodies his/her right to self-fulfillment. And then the personality as a subject of a law-governed society and state becomes such a citizen having a sense of civic responsibility and real patriotism.

So, a person and human rights are a priority among all humanitarian values. And this priority, as well as their role and purpose, are obvious and undoubted. Any social reform, development and implementation of any state programs, planning and implementation of large-scale and smaller projects should be correlated with the "human dimension", and in this very context we should evaluate everything that is happening in our state and in the world in general today.

At present, the constitutional and legal regulation of relations connected with the temporary occupation of certain territories is a very important issue for Ukraine in the context of the hybrid war that the Russian Federation is leading against us, which occupied parts of Ukrainian lands in 2014. Ukraine, mobilizing its forces and with the support of a progressive international community, is struggling to restore its territorial integrity.

In general, the problems of regulation of temporarily occupied territories have been the subject of research attention since ancient times. The first attempt to link geographic conditions with the character and customs of people, their economic and political system was carried out by French philosopher of the 18th century Montesquieu. Such scholars of the 19th century as the English historian H. Buckle, the French geographer E. Reclus, the American geographer E. Huntington, the Russian geographer and sociologist L. Mechnikov at al. developed such problems.

The founder of geographical determinism is the German geographer, ethnologist, sociologist, founder of anthropogeography, geopolitics, the theory of diffusion and political geography Friedrich Ratzel (1844-1904). His main merit is the discovery of links between policies of a particular country and its geographical location. In his book "Political Geography" (1897), he emphasizes on the political and geographical location of the state.

The clarification of patterns of spatial location of settlements and creation of geographic models of cities (geo-social studies) began in the first half of the 20th century. One of the first "model-makers" of city geography was V. P. Semenov-Tian-Shansky. Geographical aspects in the context of the economy placement were developed by German scholars who created the so-called theory of a standort – a place of location. The term "standort" means not real, but optimal placement of production. This direction was represented by J. Thunen, A. Weber, A. Losch and others.

In national geographic science, S. L. Rudnytsky was one of the first who examined the particular influence of a geographical position on the development of Ukraine in 1916 in the work "Ukrainian case on the state of political geography"[2]. A significant contribution to the development of category "geographical position" was made by O. Topchiev, O. Shabliy, M. Palamarchuk, M. Pistun, V. Grytsevich, V. Lazhnik and others. Thus, the features of the state territory have a great impact on its significance at the world political arena, and the concept of "geographical location" is one of the fundamental categories of geography.

The formation of Ukraine as an independent state is accompanied by transformation processes, requiring diverse research. In this sense, the political and geographical factor allows localizing the advantages and threats spatially, finding out the regional proportions and disproportions of the political field of the state, as well as determining the direction of development of political processes.

This research corresponds to the state scientific programs, plans and topics, which comprehensively cover the human and civil rights and freedoms at the temporarily occupied territories. This is, first of all: the Law of Ukraine of July 11, 2001 "On Priority Areas for the Development of Science and Technology" (Article 3, Priority Areas for the Development of Science and Technology for the Period up to 2020); "The National Program of Adaptation of Ukrainian Legislation to the Law of the European Union" (the Law of Ukraine of March 18, 2004, № 1629-IV); "Priority Direction of the Development of Legal Science for 2016-2020", approved by the Resolution of the General Meeting of the National Academy of Legal Sciences of Ukraine dated March 3, 2016, "Strategy for Sustainable Development "Ukraine-2020", approved by the

[2] Рудницький С. Л. Українська справа зі становища політичної географії. Берлін: Укр. Слово, 1923. 282 с.

Decree of the President of Ukraine dated January 12, 2015 №. 5/2015, "The Plan of Legislative Provision of the Reform in Ukraine", approved by the Verkhovna Rada of Ukraine on June 4, 2015 № 509-VIII.

2. The Concept and Features of "Temporarily Occupied Territory of Ukraine" and Its Legal Regime

Yet at the beginning of the 20th century, S. Rudnitsky[3], defining the role of political geography in the system of geographical sciences and laying the foundation of national political geography, noted that "the functioning of the state always depended on its place in the system of world territorial-political relations and the regional distribution of internal political forces". By this fact he emphasized the significance of spatial analysis of political processes.

The state border is, above all, the frontier of protecting its national and international interests: economic, political, social, military, environmental and others. In addition, it is a face, a reputation of the state. For the young Ukrainian statehood, when the processes of forming national identity are taking place in the country, the feeling of own nation is manifested, first of all, through contacts with the outside world, which is the most visual at the border. The border is also a symbol of national sovereignty, independence of the state[4].

However, since 2014, a part of Ukrainian territory has been under the threat of exclusion – occupation and annexation of Ukrainian lands of the Autonomous Republic of Crimea by the Russian Federation took place.

The concept of "military occupation" (Latin occupatio – seizure) is defined as the temporary seizure by the armed forces of one state of the territory of another state without gaining sovereignty over it. Currently, there is no consensus among experts on how to determine the set of criteria by which one can determine the correspondence of a particular occupation case unambiguously. In various sources, the following features of occupation are mentioned: temporality of the mission, temporary status (we should mention that the limits of temporality, clear criteria for the distinction from continuity are not given); the inevitable presence of the victim state (country, people, etc.) as a party to the relations;

[3] Рудницький С. Л. Українська справа зі становища політичної ґеографії. Берлін: Укр. Слово, 1923. 282 с.

[4] Купрієнко Д. А., Дем'янюк Ю. А., Діденко О. В. Державна територія і державний кордон: навчальний посібник. Хмельницький: Видавництво НАДПСУ, 2014. 256 с.

indispensable – de jure or de facto – staying in a state of war, or violent nature of invasion of the occupation armed forces; taking over the functions of management, establishment of own administration at the occupied territory, establishment of the fact of control over the occupied territory and/or the population by armed forces; compliance with international legal norms, which determine the compulsory international legal responsibility for its initiator; recognition of the occupational status of the territory by the world community.

Taking into account the abovementioned, one can make a conclusion that occupation in all cases is carried out with the participation of military force and has some types: occupation under the state of war (military, hostile); post-war occupation (according to peace treaties)[5].

Occupation under the state of war. The regime and legal aspects of military occupation are defined by the special international treaties adopted by the IV Hague Conference of 1907, the Geneva Conventions of 1949 and the protocols of 1977 to them. According to these international acts, military occupation is the temporary occupation by the armed forces of one state of the territory of another state with the taking over of the basic management functions. This territory is considered occupied when the actual power on it passed to the hostile army. The occupying party must respect human rights, prevent deportations and mass executions of population. It has the right to withdraw funds, treasury and other state assets of the occupied party, while private property, community property, as well as educational, scientific, religious, artistic, charitable institutions should be inviolable.

Armed resistance in case of occupation is not a decisive factor. The Geneva Conventions of 1949 (Article 2) state: "The Convention will also apply in all cases of occupation of all or a part of the territory of the High Contracting Party, even if this occupation does not meet any armed resistance".

Post-war occupation. The regime and legal rules of post-war occupation are usually determined by special international treaties of stakeholders specifically for a particular country or territory for the purpose of fulfilling the terms of a peace treaty, for example, in the event of imposing an indemnity. The post-war occupation is also aimed at

[5] Купрієнко Д. А., Дем'янюк Ю. А., Діденко О. В. Державна територія і державний кордон: навчальний посібник. Хмельницький: Видавництво НАДПСУ, 2014. 256 с.

threatening or reprisals, such as an embargo or a boycott, to force the other party to take necessary action[6].

Occupation in peace time. Occupation is not always connected with war. The regime and legal norms of non-hostile occupation in peace time, as well as in the post-war period, are established by special treaties between states. However, there is still no generally accepted view on sufficiency for inclusion in this category of bilateral treaties between the occupier state and the occupied state, whether the indispensable condition is the verification and recognition of such treaties or a direct mandate from the world community, its supranational structures such as the League of Nations, the United Nations. Non-hostile occupations include, as a rule, numerous peacekeeping missions of the UN, NATO, Collective Security Treaty Organization (CSTO) and other organizations in the event of presence of a UN mandate. The issues of permissible levels of interference or non-interference of the occupation forces with the activities of political power at the occupied territory are considered as essential[7].

At present, Ukrainian legislation, in particular the Law of Ukraine "On ensuring the rights and freedoms of citizens and legal regime at the temporarily occupied territory of Ukraine" (Article 1), has determined that the temporarily occupied territory of Ukraine is an integral part of the territory of Ukraine, governed by its Constitution and laws.

The temporarily occupied territories of Ukraine are recognized as follows:

1) The land of the Autonomous Republic of Crimea and Sevastopol, internal waters of Ukraine of these territories;

2) Internal sea waters and the territorial sea of Ukraine around the Crimean Peninsula, the territory of the exclusive (maritime) economic zone of Ukraine along the coast of the Crimean Peninsula and the coastal continental shelf of Ukraine, which is subject to jurisdiction of Ukrainian state authorities in accordance with norms of international law, the Constitution and laws Ukraine;

[6]Купрієнко Д. А., Дем'янюк Ю. А., Діденко О. В. Державна територія і державний кордон: навчальний посібник. Хмельницький: Видавництво НАДПСУ, 2014. 256 с.

[7]Купрієнко Д. А., Дем'янюк Ю. А., Діденко О. В. Державна територія і державний кордон: навчальний посібник. Хмельницький: Видавництво НАДПСУ, 2014. 256 с.

3) Airspace over the territories specified in clause 1 and 2 of this part[8].

Normative legal regulation of the occupied territory is carried out by the Constitution of Ukraine, the Law of Ukraine "On ensuring the rights and freedoms of citizens and the legal regime at the temporarily occupied territory of Ukraine", the Law of Ukraine "On Border Control", the Criminal Code of Ukraine (Articles 332-1, 438), the Criminal Procedural Code of Ukraine, the Code of Administrative Offences of Ukraine (Articles 202, 204-2), the Order of the Cabinet of Ministers of Ukraine "On Temporary closure of checkpoints across the state border and control points" and others.

Temporarily occupied territories are subject to a special legal regime of crossing their borders, transactions, elections and referendums, the exercise of other human rights and freedoms. The legal regime of the temporarily occupied territory also includes a special procedure for ensuring the rights and freedoms of people who live there. This regime can be determined, changed or canceled solely by the laws of Ukraine[9].

The Basic Law of Ukraine has determined that Ukraine is a sovereign and independent, democratic, social, law-governed state which sovereignty extends over its entire territory. Ukraine is a unitary state, and its territory within the boundaries of the existing border is integral and inviolable[10].

The Russian Federation cynically violated these provisions of the Constitution of Ukraine, having infringed on the territorial integrity of Ukraine.

The Constitution of Ukraine (Article 17) defines: protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information safety are the most important functions of the state, the matter of all Ukrainian people. The defense of Ukraine, protection of its sovereignty, territorial integrity and inviolability are relied on the Armed Forces of Ukraine.

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[8] Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України: Закон України від 27.04.2014 р. № 1207-VII. Дата оновлення: 04.11.2018 р. URL: https://zakon.rada.gov.ua/laws/show/1207-vii

[9] Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України: Закон України від 27.04.2014 р. № 1207-VII. Дата оновлення: 04.11.2018 р. URL: https://zakon.rada.gov.ua/laws/show/1207-vii

[10] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

The maintenance of state security and protection of the state border of Ukraine are entrusted to corresponding military formations and law-enforcement bodies of the state, organization and procedure of their activities are determined by law. The Armed Forces of Ukraine and other military formations can be used by no one to restrict the rights and freedoms of citizens or in order to overthrow the constitutional order, eliminate the authorities or hinder their activities[11].

The activities of Ukraine in the foreign policy domain are aimed at ensuring its national interests and safety by maintaining peaceful and mutually beneficial cooperation with the members of international community on generally accepted principles and in compliance with the norms of international law[12].

The Constitution of Ukraine (section 2) also defines the rights, freedoms and duties of a person and a citizen, extending throughout the territory of the state. Occupation limited the ability of people at the temporarily occupied territories to exercise the rights provided by this section.

The territorial structure of Ukraine is based on the principles of unity and integrity of the state territory, a combination of centralization and decentralization in the exercise of powers, balance and socio-economic development of regions, taking into account their historical, economic, ecological, geographical and demographic peculiarities, ethnic and cultural traditions.

The administrative-territorial structure of our state (Article 133 of the Constitution of Ukraine) include the Autonomous Republic of Crimea, regions, districts, cities, districts in cities, settlements and villages. Kyiv and Sevastopol have a special status, defined by the laws of Ukraine[13].

Since 2014, the system of administrative-territorial organization of Ukraine has been violated, due to the loss of actual control over the Autonomous Republic of Crimea, part of the territories of Donetsk and Luhansk regions.

The status of the Autonomous Republic of Crimea is defined in section 10 of the Constitution of Ukraine, Article 134 of which states that

[11] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

[12] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

[13] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

the Autonomous Republic of Crimea is an integral part of Ukraine and, within the limits of powers defined by the Constitution of Ukraine, resolves the issues assigned to its competence[14]. According to Article 135 The Autonomous Republic of Crimea has its Constitution adopted by the Verkhovna Rada of the Autonomous Republic of Crimea and approved by the Verkhovna Rada of Ukraine in not less than half of its constitutional composition.

At the same time, the normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea and the decisions of its Council of Ministers should not contradict the Constitution and laws of Ukraine. They are adopted in accordance with the Constitution of Ukraine, the laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine and for their implementation[15].

The representative body of the ARC (Article 136 of the Constitution of Ukraine) is the Verkhovna Rada of the Autonomous Republic of Crimea, whose deputies are elected on the basis of universal, equal, direct electoral right by secret ballot. The term of powers of the Verkhovna Rada of the ARC, whose deputies are elected at the regular election, is five years. Terminating the powers of the Verkhovna Rada of the ARC entails the termination of powers of its deputies. The Verkhovna Rada of the Autonomous Republic of Crimea, within the scope of its powers, makes decisions and resolutions that are compulsory for implementation in the Autonomous Republic of Crimea. The Crimean government is the Council of Ministers of the Autonomous Republic of Crimea. The chairman of the Council of Ministers of the ARC is appointed and dismissed by the Verkhovna Rada of the Autonomous Republic of Crimea with the consent of the President of Ukraine. The powers, procedure for the formation and activities of the Verkhovna Rada and the Council of Ministers of the ARC are determined by the Constitution and laws of Ukraine, normative legal acts of the Verkhovna Rada of the ARC on matters within its competence. Justice in the Autonomous Republic of Crimea is carried out by the courts of Ukraine[16].

[14] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

[15] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

[16] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

Article 137 of the Constitution of Ukraine stipulates that the ARC carries out normative regulation of the following issues:

1) Agriculture and forests;

2) Melioration and quarries;

3) Public works, crafts and trading; charity;

4) Urban development and housing;

5) Tourism and hotel business; fairs;

6) Museums, libraries, theaters and other cultural institutions, historical and cultural reserves;

7) Public transport, highways, water pipes;

8) Hunting and fishing;

9) Sanitary and hospital services.

In case of non-compliance of normative legal acts of the Verkhovna Rada of the ARC with the Constitution of Ukraine and the laws of Ukraine, the President of Ukraine may suspend their action with simultaneous appeal to the Constitutional Court of Ukraine as to their constitutionality[17].

The competence of the ARC includes (Article 138 of the Constitution):

1) Appointment of the election of deputies of the Verkhovna Rada and approval of the ARC election commission composition;

2) Organization and conduct of local referendums;

3) Management of property belonging to the Autonomous Republic of Crimea;

4) Development, approval and implementation of the ARC budget on the basis of a unified tax and budget policy of Ukraine;

5) Development, approval and implementation of the ARC programs regarding socio-economic and cultural development, rational use of nature, environmental protection in accordance with national programs;

6) Determination of the status of localities as resorts; establishment of sanitary protection zones of resorts;

7) Participation in ensuring the rights and freedoms of citizens, national concord, assistance in the protection of law order and public safety;

[17] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

8) Ensuring the functioning and development of state and national languages and cultures in the ARC; protection and use of historical monuments;

9) Participation in the development and implementation of state programs for the return of deported people;

10) Initiation of introduction of a state of emergency and establishment of areas of emergency ecological situation in the ARC or in its separate areas.

In accordance with the laws of Ukraine other powers can be delegated to the Autonomous Republic of Crimea[18].

Article 139 of the Constitution of Ukraine provides for operation of the Representative Office of the President of Ukraine in the ARC, the status of which is determined by the relevant law of Ukraine[19].

The constitutional and legal regulation of the temporarily occupied territories of Ukraine is a set of constitutional norms enshrined in the legal acts defining the legal status and regime of the temporarily occupied territories, as well as the scope of human rights and freedoms at the temporarily occupied territories.

3. The Ways of Improvement of Ukrainian Legislation in the Part of Provision of Human Rights and Freedoms at the Temporarily Occupied Territories of Ukraine

Analyzing the constitutional law science, we can see the gap between theoretical studies of the constitutional human and civil rights and freedoms at temporarily occupied territories and the needs of legal practice, inability of scientists to formulate substantiated conclusions and proposals in the near future, that is why it is necessary to comprehensively combine scientific achievements in the field of research.

In the Basic Law of Ukraine there is no concept of temporarily occupied territories, and the science of constitutional law does not define the concept of "constitutional and legal regulation of temporarily occupied territories". Therefore, taking into account the relevance of this problem, we consider it necessary to define these concepts.

[18] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

[19] Конституція України: Закон України від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

Therefore, the temporarily occupied territories of Ukraine are an integral part of Ukrainian territory, defined by the Constitution of Ukraine, which is subject to the Constitution and laws of Ukraine in accordance with international law ratified by Ukraine.

Although at the end of 20th century and at the beginning of the 21st century Ukrainian theorists, constitutionalists and specialists of other branches of law studied and are still studying the human and civil rights and freedoms, it remains the urgent issue: the provision of human rights at the temporarily occupied territories, the restoration of territorial value. Therefore, an advisory body should be set up under the President of Ukraine – the Commission on ensuring human rights at the temporarily occupied territories and restoring the territorial integrity of Ukraine.

According to the aim and role of the Commission activities it would be possible to include the following in its main tasks:

1) Assisting the President of Ukraine in approving the ideas of ensuring human rights at the temporarily occupied territories and restoring territorial integrity;

2) Preparing and drafting proposals on normative legal protection of human rights at temporarily occupied territories and restoration of territorial integrity for the President of Ukraine;

3) Advisory, informational, expert-analytical and other support of the activities of the President of Ukraine for ensuring human rights at the temporarily occupied territories and restoration of territorial integrity;

4) Cooperation with research institutions and higher educational institutions, in particular, on conducting research and analytical studies on the problems of ensuring human rights at the temporarily occupied territories and restoring territorial integrity; and consultations and preparation of proposals on the above issues; ensuring interaction between public authorities, local self-government bodies and non-governmental organizations whose activities are aimed at ensuring the human and civil rights and freedoms at temporarily occupied territories and restoration of territorial integrity;

5) Preparation of expert opinions on the laws adopted by the Verkhovna Rada of Ukraine under the instructions of the President of Ukraine, and submitted to him for signature, with respect to observance of provisions of ensuring human rights at the temporarily occupied territories and restoration of territorial integrity;

6) Monitoring of legislative, administrative and judicial practice in the field of ensuring human rights at the temporarily occupied territories and restoration of territorial integrity, etc.;

7) Preparation of proposals for the development of international cooperation in the field of human rights protection at the temporarily occupied territories and restoration of territorial integrity, generalization and promotion of dissemination of national and international experience on these issues, promotion of implementation of international programs and projects in Ukraine on the issues of ensuring human rights at the temporarily occupied territories and restoration of territorial integrity;

8) Conducting and participating in the work of conferences, seminars, public hearings on the issues of generalization and introduction into practice of better national and international experience in solving problems in the field of human rights protection at temporarily occupied territories and restoration of territorial integrity, etc.

In order to fulfill the tasks entrusted to the Commission for ensuring human rights at the temporarily occupied territories and restoration of territorial integrity of Ukraine, it should be entitled to receive information, documents and materials from the state and local self-government bodies on the issues of ensuring human rights at the temporarily occupied territories and restoration of territorial integrity; to create working groups, commissions, convene meetings on issues within its competence; to involve employees of central and local executive bodies, institutions, organizations (with the consent of their leaders) to consider issues within its competence; to involve scientists, experts and specialists in the study of certain issues, execution of works and tasks, including on a contractual basis; to carry out publishing activities.

On the one hand, deputies, representatives of public authorities (law enforcement, human rights activists, etc.), could enter the Commission on ensuring of human rights at the temporarily occupied territories and restoration of territorial integrity of Ukraine, on the other hand – well-known scientists and representatives of the public.

After its creation, in the course of performing the tasks assigned to it, the Commission on ensuring human rights at the temporarily occupied territories and restoration of territorial integrity of Ukraine will, under the established procedure, interact with the APU, as well as consultative, advisory and other subsidiary bodies and services created by the President

of Ukraine, with the apparatus of the VRU, The Secretariat of the Cabinet of Ministers of Ukraine, central and local executive authorities, local self-government bodies, their associations, public organizations, international institutions, etc.

CONCLUSIONS

Since the very beginning of civilization a person has tried to assert own rights, protect and renew them in case of violation. A struggle for new territories has begun with the emergence of statehood and establishment of country borders, and it is still taking place. To that end, we can state that a war has been the most significant form of relations between people for a long time. As a result of such struggle, unlawful seizure of the territories of one state by another state often takes place, occupation respectively and, as a rule, annexation. Therefore, the rights of people, who found themselves at the occupied territories after the invasion, required a special protection.

One of the reasons, having led to emergence of wars and conflicts during all human history, has been and is still the issue of countries' territories, as well as their borders which is integral attribute of sovereignty of any state.

The constitutional and legal regulation of the temporarily occupied territories of Ukraine is an essential issue for our state under the hybrid war conditions, triggered by the Russian Federation. This is why Ukraine is trying to restore its territorial integrity independently and with the assistance of international support.

At present, the status of the temporarily occupied territories of Ukraine is specific. In this regard, the issues of human rights in these areas acquired a specific nature. It is certainly that due to unlawful actions of the Russian Federation the part of the state territory of Ukraine has found itself under the aggressor country occupation. In accordance with Article 22 of the Constitution of our state, the human and civil rights and freedoms enshrined therein are not exhaustive, constitutional rights and freedoms are guaranteed and can not be cancelled. The part of this article emphasizes that when new laws are adopted or when amendments are made to them, it is not allowed narrowing the content and scope of existing rights and freedoms. The Constitution of Ukraine declares that the establishing and ensuring human rights and freedoms is a main duty of

the state. The observance of human rights is a main goal of relations between the state and a citizen, and free and effective exercise of human rights is one of the most important features of a democratic society and a law-governed state. The relations between state institutions and citizens must guarantee both real observance of rights and freedoms belonging to the citizen, as well as reliable legal protection in case of their violations, which finds its embodiment in the legal status of a person and a citizen. However, today the Ukrainian state is in an extremely vulnerable situation, since it is deprived of the opportunity to control the occupied territories, and, accordingly, to implement the norms of the Constitution of Ukraine into life.

There is no concept of the temporarily occupied territories in the Constitution of Ukraine, and the science of constitutional law does not define the concept of "constitutional legal regulation of the temporarily occupied territories of Ukraine". Due to the relevance of this issue today, it is considered to be necessary to give the definition of this concept.

Thus, the temporarily occupied territories of Ukraine are an integral part of Ukrainian territory, defined by the Constitution of Ukraine, which is subject to the Constitution and laws of Ukraine in accordance with the norms of international law ratified by the Verkhovna Rada of Ukraine.

The constitutional and legal regulation of the temporarily occupied territories of Ukraine is a set of constitutional norms enshrined in the legal acts defining the legal status and regime of temporarily occupied territories, as well as the scope of human rights and freedoms at the temporarily occupied territories.

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Information about the author:
Iliashko O. O.
Candidate of Juridical Sciences,
Assistant Professor at the Department of Constitutional
and International Law
of the Educational-Scientific Humanitarian Institute
of the V. I. Vernadsky Taurida National University
33, Ivana Kudri str., Kyiv, Ukraine

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ACTIVITIES OF INTERNATIONAL ORGANIZATIONS IN THE FIELD OF EMPOWERMENT OF WOMEN, GENDER EQUALITY

Kaminska N. V.

INTRODUCTION

Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful and successful world. Providing women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes will fuel sustainable economies and benefit societies and humanity at large. However, gender inequality is still deeply ingrained in every society. Women suffer from violence, manifestation of professional discrimination, gender segregation of work, and so on. They are not sufficiently involved in the maintenance of peace and security within the framework of national, regional and international institutions and mechanisms for preventing, regulating and resolving conflicts.

In modern science, the issue of gender identity questioned representatives of different sciences: philosophy, sociology, medicine, jurisprudence etc. For example, it includes the work of such authors as S. Breus, A. Gorina, K. Kirichenko, C. Bem, I. Malkina, O. Grednovska, A. Kopêv, N. Romanova, A. Šhaliganova. In recent years, gender problems associated with the issue opportunities, human rights and non-discrimination (J. Rawls, B. Weiss, M. Vitruk, G. Bekker, J. Robertson, T. Loenen, D. Harris, I. Zvaak, M. de Salvia, G. Christy).

Therefore, it is necessary to study the work of such international organizations as the United Nations that concerning providing gender equality and empower all women and girls and and NATO activities, their impact on Member States, which in turn changes the peace and security policy in general.

Task**:** according to the purpose of our research describe the history and evaluate the work of the United Nations,identify the impact of the United Nations on the achievements of the North Atlantic Treaty

Organization and inquire into activities of the North Atlantic Treaty Organization, theirs cooperation.

1. History and work of the United Nations

The United Nations is an international organization founded in 1945. It is currently made up of 193 Member States. The mission and work of the United Nations are guided by the purposes and principles contained in its founding Charter. Due to the powers vested in its Charter and its unique international character, the United Nations can take action on the issues confronting humanity in the 21st century, such as peace and security, climate change, sustainable development, human rights, disarmament, terrorism, humanitarian and health emergencies, gender equality, governance, food production, and more[1] .

Also provides a forum for its members to express their views in the General Assembly, the Security Council, the Economic and Social Council, and other bodies and committees. By enabling dialogue between its members, and by hosting negotiations, the Organization has become a mechanism for governments to find areas of agreement and solve problems together.

The United Nations advocates values that are the cornerstone of this emerging era: freedom, justice and the peaceful resolution of disputes; better standards of living; equality and tolerance and human rights. In fact, a world of complex and global challenges is exactly the environment in which the United Nations should thrive, because these are challenges that no country can resolve on its own. Terrorism and organized crime transcend state borders. Diseases such as AIDS are spreading globally, destroying human lives and disrupting economic activities. Climate change and environmental degradation pose major challenges and not only to future generations. Inequality and poverty can lead to instability and conflict that can quickly engulf entire regions.

Today, the United Nations is doing more to translate its ideals into real, measurable change than ever before. That is why, as the world looks to the United Nations for solutions, we must, in turn, find new and better ways of working. We must find ways to deliver more fully on our promises. We must be open to new approaches and ideas, and have the courage to question our traditional way of doing things. And, above all,

[1] Overview. Retrieved from http://www.un.org/en/sections/about-un/overview/index.html

we must get ordinary people everywhere to trust our Organization, and to become more engaged in its work[2].

Promotion of equality between women and men and the empowerment of women is central to the work of the United Nations. Gender equality is not only a goal in its own right, but is also recognized as a critical means for achieving all other development goals, including the Millennium Development Goals. Eradicating poverty and hunger, achieving universal primary education and health for all, combating HIV/AIDS and facilitating sustainable development all require systematic attention to the needs, priorities and contributions of women as well as men. The UN actively promotes women's human rights and works to eradicate the scourge of violence against women, including in armed conflict and through trafficking. Also adopts global norms and standards and supports follow-up and implementation at the national level, including through its development assistance activities.

The Commission on the Status of Women, under ECOSOC, monitors progress towards gender equality throughout the world by reviewing implementation of the platform for action that emerged from the Fourth World Conference on Women (Beijing, 1995). The Commission makes recommendations for further action to promote women's rights, and to address discrimination and inequality in all fields. The major contributions of the 45-member Commission during more than 60 years of activity include the preparation of and follow-up to four world conferences on women, including the Beijing Conference, and development of the treaty on women's human rights – the Convention on the Elimination of All Forms of Discrimination against Women.

The Committee on the Elimination of Discrimination against Women (CEDAW) monitors adherence to the Convention on the Elimination of All Forms of Discrimination against Women. The 23-member Committee holds constructive dialogues with states parties on their implementation of the Convention, based on reports they submit. Its recommendations have contributed to a better understanding of women's rights, and of the means to ensure the enjoyment of those rights and the elimination of discrimination against women.

The Division for the Advancement of Women, in the Department of Economic and Social Affairs, supports the efforts of the Commission on

[2] The United Nations Today. Retrieved from http://www.un.org/ar/geninfo/pdf/UN.today.pdf

the Status of Women, the Economic and Social Council and the General Assembly to advance the global policy agenda for gender equality and strengthen the mainstreaming of gender perspectives in all areas of the United Nations.

The Special Adviser on Gender Issues and Advancement of Women provides advice to the Secretary-General. She plays a leadership and coordinating role within the UN on gender equality issues, and provides advice and support on gender mainstreaming in all areas of its work, as well as on improving the status of women within the Organization – including the achievement of 50/50 gender balance. She provides support at the senior level to intergovernmental and expert bodies, including to the Security Council, on women, peace and security. The Special Adviser also chairs the Inter-Agency Network on Women and Gender Equality (IANWGE), which is comprised of the gender equality advisers and focal points from all parts of the UN system.

Beyond the Secretariat, all the organizations of the United Nations family address issues relating to women and gender in their policies and programmes.

The term "human rights" was mentioned seven times in the UN's founding Charter, making the promotion and protection of human rights a key purpose and guiding principle of the Organization. In 1948, the Universal Declaration of Human Rights brought human rights into the realm of international law. Since then, the Organization has diligently protected human rights through legal instruments and on-the-ground activities[3].

The Commission on the Status of Women (CSW) is the principal global intergovernmental body dedicated to the promotion of gender equality and the advancement of women. UN Women, established in 2010, serves as its Secretariat.

Women and girls represent half of the world's population and therefore also half of its potential. But, today gender inequality persists everywhere and stagnates social progress. As of 2014, 143 countries have guaranteed equality between men and women in their Constitutions but 52 have yet to take this step[4].

[3] Protect Human Rights. Retrieved from http://www.un.org/en/sections/what-we-do/protect-human-rights/

[4] GENDER EQUALITY: WHY IT MATTERS. Retrieved from http://www.un.org/sustainabledevelopment/wp-content/uploads/2016/08/5_Why-it-Matters_GenderEquality_2p.pdf ;

Inequalities faced by girls can begin right at birth and follow them all their lives. In some countries, girls are deprived of access to health care or proper nutrition, leading to a higher mortality rate. As girls move into adolescence, gender disparities widen. Child marriage affects girls far more than boys. Globally, nearly 15 million girls under age 18 are married every year – or 37,000 each day.

Marrying young also affects girls' education. About one third of developing countries have not achieved gender parity in primary education. In sub-Saharan Africa, Oceania and Western Asia, girls still face barriers to entering both primary and secondary school.

Disadvantages in education translate into lack of access to skills and limited opportunities in the labour market. Women's and girls' empowerment is essential to expand economic growth and promote social development. The full participation of women in labor forces would add percentage points to most national growth rates – double digits in many cases.

Worldwide, 35 percent of women have experienced physical and/or sexual intimate partner violence or non-partner sexual violence. An estimated 133 million girls and women have experienced some form of female genital mutilation/cutting in the 29 countries in Africa and the Middle East, where the harmful practice is most common with a high risk of prolonged bleeding, infection (including HIV), childbirth complications, infertility and death.

Regardless of where you live in, gender equality is a fundamental human right. Advancing gender equality is critical to all areas of a healthy society, from reducing poverty to promoting the health, education, protection and the well-being of girls and boys. Investing in education programmes for girls and increasing the age at which they marry can return $5 for every dollar spent. Investing in programs improving income-generating activities for women can return $7 dollars for every dollar spent.

Recalling the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General

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Kaminska, N.; *Romanova, N.* Глобальні завдання ООН у сфері гендерної рівності. The United Nations worldwide goal: achieve gender equality and empowe http://elar.naiau.kiev.ua/jspui/handle/123456789/5196

Assembly entitled “Women 2000: Gender Equality, Development and Peace for the Twenty-First Century” (A/S-23/10/Rev.1), in particular those concerning women and armed conflict the Security Council at its 4213th meeting, on 31 October 2000 adopted Resolution 1325 (2000).

In this Resolution the Security Council urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict; encourages the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decisionmaking levels in conflict resolution and peace processes; urges the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf, and in this regard calls on Member States to provide candidates to the Secretary-General, for inclusion in a regularly updated centralized roster et cetera[5].

Reaffirming its commitment to the continuing and full implementation of resolution 1325 (2000), 1612 (2005) and 1674 (2006) and recalling the Statements of its president of 31 October 2001 (Security Council/PRST/2001/31), 31 October 2002 (Security Council/PRST/2002/32), 28 October 2004 (Security Council/PRST/2004/40), 27 October 2005 (Security Council/PRST/2005/52), 8 November 2006 (Security Council/PRST/2006/42), 7 March 2007 (Security Council/PRST/2007/5), and 24 October 2007 (Security Council/PRST/2007/40) the Security Council accepted such resolution: Resolution 1820 (2008), adopted by the Security Council at its 5916th meeting, on 19 June 2008, Resolution 1888 (2009), adopted by the Security Council at its 6195th meeting, on 30 September 2009, Resolution 1889 (2009), adopted by the Security Council at its 6196th meeting, on 5 October 2009, Resolution 1960 (2010), adopted by the Security Council at its 6453rd meeting, on 16 December 2010, Resolution 2106 (2013), adopted by the Security Council at its 6984th meeting, on 24 June 2013, Resolution 2122 (2013), adopted by the Security Council at its 7044th meeting, on 18 October 2013, Resolution 2242 (2015), adopted by the Security Council at its 7533rd meeting, on 13 October 2015.

[5] Resolution 1325 (2000) Adopted by the Security Council at its 4213th meeting, on 31 October 2000. Retrieved from https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/ PDF/N0072018.pdf?Open Element

2. Sustainable Development Goals (SDGs)

On 1 January 2016, the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development – adopted by world leaders in September 2015 at an historic UN Summit – officially came into force. Over the next fifteen years, with these new Goals that universally apply to all, countries will mobilize efforts to end all forms of poverty, fight inequalities and tackle climate change, while ensuring that no one is left behind[6].

The SDGs, also known as Global Goals, build on the success of the Millennium Development Goals (MDGs) and aim to go further to end all forms of poverty. The new Goals are unique in that they call for action by all countries, poor, rich and middle-income to promote prosperity while protecting the planet. They recognize that ending poverty must go hand-in-hand with strategies that build economic growth and addresses a range of social needs including education, health, social protection, and job opportunities, while tackling climate change and environmental protection.

While the SDGs are not legally binding, governments are expected to take ownership and establish national frameworks for the achievement of the 17 Goals. Countries have the primary responsibility for follow-up and review of the progress made in implementing the Goals, which will require quality, accessible and timely data collection. Regional follow-up and review will be based on national-level analyses and contribute to follow-up and review at the global level.

The European Union (EU) and the United Nations (UN) are embarking on a new, global, multi-year initiative focused on eliminating all forms of violence against women and girls (VAWG) – the Spotlight Initiative. The Initiative is so named as it brings focused attention to this issue, moving it into the spotlight and placing it at the centre of efforts to achieve gender equality and women's empowerment, in line with the 2030 Agenda for Sustainable Development[7].

An initial investment in the order of EUR 500 million will be made, with the EU as the main contributor. Other donors and partners will be invited to join the Initiative to broaden its reach and scope.

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[6] The Sustainable Development Agenda. Retrieved from http://www.un.org/sustainabledevelopment/development-agenda/

[7] Goal 5: Achieve gender equality and empower all women and girls. Retrieved from http://www.un.org/sustainabledevelopment/gender-equality/

Facts and figures: 1) about two thirds of countries in the developing regions have achieved gender parity in primary education; 2) in Southern Asia, only 74 girls were enrolled in primary school for every 100 boys in 1990. By 2012, the enrolment ratios were the same for girls as for boys; 3) in sub-Saharan Africa, Oceania and Western Asia, girls still face barriers to entering both primary and secondary school; 4) women in Northern Africa hold less than one in five paid jobs in the non-agricultural sector. The proportion of women in paid employment outside the agriculture sector has increased from 35 percent in 1990 to 41 percent in 2015; 5) in 46 countries, women now hold more than 30 percent of seats in national parliament in at least one chamber.

Goal 5 targets:

1) end all forms of discrimination against all women and girls everywhere;

2) eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation;

3) eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation;

4) recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate;

5) ensure women's full and effective participation and equal opportunities for leadership at all levels of decisionmaking in political, economic and public life;

6) ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences;

7) undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws;

8) enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women;

9) adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

Policy of the North Atlantic Treaty Organization

Today is recognising the important and distinctive role that women play in conflict resolution and peace settlement. NATO's mission is to contribute to sustainable and lasting peace, within which gender equality and empower all women and girls is a key factor. The North Atlantic Alliance seeks including the gender dimension in all stages of the operational process – in the design, planning, implementation, monitoring and evaluation of policies and programmes.

The North Atlantic Alliance underlines the essential role of women in the prevention of conflict, as well as in post-conflict peace building and reconstruction efforts. It aims at the integration of gender considerations into all aspects of security work. This includes participation in conflict resolution and peace processes, peacekeeping operations, disarmament, demobilisation and reintegration, security sector reform, protection and rights of women. It also encourages increased representation of women at all decision-making levels in national, regional and international institutions, as well as consultation with local and international women's groups.

NATO is an alliance of countries from Europe and North America. It provides a unique link between these two continents, enabling them to consult and cooperate in the field of defence and security, and conduct multinational crisis-management operations together. The most important players in the North Atlantic Treaty Organization are the member countries themselves. NATO membership is open to "any other European state in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area." NATO is committed to the principle that an attack against one or several of its members is considered as an attack against all. This is the principle of collective defence, which is enshrined in Article 5 of the Washington Treaty. So far, Article 5 has been invoked once – in response to the 9/11 terrorist attacks in the United States in 2001[8].

[8] WHAT IS NATO? URL: https://www.nato.int/nato-welcome/index.html#.

Security in our daily lives is key to our well-being. NATO's purpose is to guarantee the freedom and security of its members through political and military means. POLITICAL – NATO promotes democratic values and enables members to consult and cooperate on defence and security-related issues to solve problems, build trust and, in the long run, prevent conflict.

Every day, member countries consult and take decisions on security issues at all levels and in a variety of fields. A "NATO decision" is the expression of the collective will of all 29 member countries since all decisions are taken by consensus. Hundreds of officials, as well as civilian and military experts, come to NATO Headquarters each day to exchange information, share ideas and help prepare decisions when needed, in cooperation with national delegations and the staff at NATO Headquarters.

The North Atlantic Alliance partnership with the United Nations for peace and security

Around 40 non-member countries work with NATO on a wide range of political and security-related issues. These countries pursue dialogue and practical cooperation with the Alliance and many contribute to NATO-led operations and missions. NATO is also cooperating with a wide network of international organisations.

NATO's partnership with the UN is also a central one due to the role played by that body within the world system and by the Allies' pledge of faith (invoked in the preamble to the North Atlantic Treaty) "in the purposes and principles of the Charter of the United Nations." The Security Council's mandate – to safeguard international security and peace – meshes well with the commitment of NATO members to "unite their efforts for collective defence and for the preservation of peace and security." It is clearly in NATO's interests to support the UN and to help strengthen its capacity to perform the many missions assigned to it by the global community[9].

North Atlantic Treaty Organization and the UN have worked together in a number of conflict zones, with the Alliance providing operational support and security so that the UN can move ahead on reconstruction, development, and governance-building. Although their partnership dates

[9] Nato 2020: assured security; dynamic engagement. URL: https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2010_05/20100517_100517_expertsreport.pdf.

back more than a decade – and while NATO and the UN signed a framework agreement in 2008 which has improved practical cooperation in some cases – problems remain. UN personnel have been disappointed, on occasion, with the level of security and support that NATO provides. NATO tends to wait until a mission begins before starting to coordinate with the UN.

In a world of global threats, security depends increasingly on a rule-based international order. One of NATO's priorities, therefore, should be to strengthen the ability of the United Nations to fulfil its responsibilities. NATO should work with the UN to respond positively to Security Council Resolution 1325, concerning the role of women in security and peace.

The North Atlantic Alliance and its partners are taking action to promote the role of women in peace and security. This demonstrates their commitment to support the implementation of United Nations Security Council Resolution (UNSCR) 1325 and related Resolutions (1820, 1888, 1889, 1960, 2106, 2122 and 2422). These Resolutions recognise the disproportionate impact that war and conflict has on women and children and highlight the fact that historically women have been left out of peace processes and stabilisation efforts. They call for full and equal participation of women at all levels ranging from conflict prevention to post-conflict reconstruction, peace and security. They call for the prevention of sexual violence and accountability to end impunity for incidents of sexual violence in conflict. Together, these resolutions frame the Women, Peace and Security agenda[10].

The Alliance and its partners are committed to removing barriers for women's participation in the prevention, management and resolution of conflicts and in peace-building, and to reducing the risk of conflict-related and gender-based violence. NATO Allies and partners in the Euro-Atlantic Partnership Council (EAPC) launched work in this area in 2007 with the adoption of a specific policy to support implementation of UNSCR 1325.

Over the years, the policy has been updated, related action plans have strengthened implementation and more partner countries from around the globe have become associated with these efforts. At the 2014 Wales Summit, Allied leaders acknowledged that the integration of gender

[10] Women, Peace and Security. URL: https://www.nato.int/ cps/en/natohq/topics_91091.htm?selected Locale=en.

perspectives throughout NATO's three essential core tasks (i.e. collective defence, crisis management and cooperative security) will contribute to a more modern, ready and responsive NATO. Gender is an important focus of NATO's cooperation with other international organizations – in particular the United Nations – and civil society.

NATO is also taking action within its own organisation and structures to promote gender equality and the participation of women. The NATO Secretary General has appointed a Special Representative to serve as the high-level focal point on all aspects of NATO's contributions to the Women, Peace and Security agenda.

According to the United Nations, before the Second World War, 90 percent of casualties in conflicts were combatants. Today, the majority of casualties are civilians, especially women and children. Not only are their needs ignored during times of conflict, but women are often excluded from efforts to make and keep the peace – despite representing half the population. The continued under-representation of women in peace processes, the lack of institutional arrangements to protect women and the widespread use of sexual– and gender-based violence as a tactic of war, remain major impediments to building sustainable peace.

At the multilateral level, NATO and its Partners have joined a number of International Organisations, such as the EU and the OSCE, in contributing to the international community's efforts in support of the principles of UNSCR 1325 and its related Resolutions, and have advocated a broad approach to this global issue in the security field. There is increasing recognition that women have a crucial role to play and special skills to contribute to dealing successfully with the security challenges of the 21st century[11].

The UN Security Council called on the international community to take action to address these issues through UNSCR 1325, adopted on 31 October 2000, which was followed by seven additional Resolutions (1820, 1888, 1889, 1960, 2106, 2122 and 2422). NATO is actively seeking to incorporate gender perspectives within the analysis, planning, execution and evaluation of its operations and missions. These efforts increase operational effectiveness and have already made a tangible difference to the lives of women in Afghanistan and in the Balkans.

[11] Comprehensive report on the NATO/EAPC policy on the implementation of UNSCR 1325 on women, peace and security and related resolutions. URL: http://sedici.unlp.edu.ar/bitstream/handle/10915/44524/NATO_-_Comprehensive_report_on_the_NATO_EAPC_policy_on..._11_p._.pdf?sequence=78

Gender-related issues are an important focus of work in NATO's cooperation with partner countries, both in the preparation of troops that will deploy in NATO-led operations and in wider cooperation on defence capacity building. Such initiatives are already bearing fruit. For example, a Trust Fund project in Jordan supports the development of service women in the Jordanian Armed Forces through improved training facilities, enhanced education and training material and policy initiatives. Some of the country's women soldiers were deployed as female engagement teams as part of the NATO-led operation in Afghanistan.

The North Atlantic Alliance and its partners' active commitment to UNSCR 1325 and related Resolutions resulted in a formal NATO/EAPC policy to support the implementation of these Resolutions, first issued in December 2007[12].

A first action plan to mainstream UNSCR 1325 and related Resolutions into NATO-led operations and missions was endorsed at the Lisbon Summit in November 2010 on the occasion of the tenth anniversary of UNSCR 1325.

The policy and action plan were revised in 2014. This paved the way for more practical cooperation with NATO's broad partnership network beyond the EAPC framework. In total 56 Allies and partners signed up to their implementation. Afghanistan, Australia, Japan, Jordan and the United Arab Emirates participated actively in their development, and New Zealand later associated itself with this effort too. Progress reports are issued every six months. The policy is based on the key pillars of UNSCR 1325: participation of women in conflict prevention, management and resolution; women's participation in peace-building; protection of women's and girls' rights; and prevention of conflict-related sexual– and gender-based violence. The policy draws on both internal and external NATO resources for implementation.

NATO's fundamental and enduring purpose is to safeguard the freedom and security of all its members by political and military means. In accordance with NATO's Strategic Concept, this will be done through its three essential core tasks of collective defence, crisis management and

[12] RECOMMENDATIONS ON IMPLEMENTATION OF UNSCR 1325. URL: https://www.nato.int/issues/women_nato/pdf/2010/BrochureGender.pdf;

On approval of the national plan of action for the implementation of UN Security Council resolution 1325 women, peace, security for the period to 2020 year: Ordinance of the Cabinet of Ministers of Ukraine of 24.02.2016 № 113-r. URL : http://zakon3. rada . gov . ua / laws / show /113-2016-% D 1%80/ page

cooperative security. Within the context of NATO's wider policy objectives and core tasks, NATO will continue to integrate a gender perspective into its work and contribute to the implementation of UNSCR 1325 and related Resolutions[13].

The North Atlantic Alliance and its partners aim to contribute to the full implementation of the UN Security Council Resolutions on Women, Peace and Security by making this Policy an integral part of their everyday business in both civilian and military structures. NATO and its partners aim to ensure that a gender perspective is mainstreamed into policies, activities and efforts to prevent and resolve conflicts. Due regard will be given to the social roles of both men and women and how these may lead to different risks and security needs. Attention will also be paid to how these roles may translate into different contributions to conflict prevention and resolution. NATO and its partners aim to yield a change in mind sets and behaviours in their institutions and promote awareness and positive changes.

The two Strategic Outcomes aimed for in this Action Plan follow two main tracks; one for the participation of women and the other of integration and institutionalization of gender perspectives. All actions are to support these Strategic Outcomes: 1. reduced barriers for the active and meaningful participation of Women in NATO's, Allies' and partners' defence and security institutions, and within NATO-led operations, missions and crisis management; 2. Women, Peace and Security priorities and a gender perspective are integrated in policies, activities and efforts under-taken by NATO, Allies and partners to prevent and resolve conflicts. The period to be covered is two years, from June 2016 – June 2018.

In line with the policy, the action plan concentrates on 14 outcomes and several actions, whose implementation and responsibility are shared between NATO International Staff, NATO Military Authorities and relevant national authorities.

Other cross-cutting aspects, such as human resources policies, education, training and exercises and public diplomacy, are also addressed and play an important role in enhancing the policy's implementation within the Alliance.

[13] NATO/EAPC ACTION PLAN FOR THE IMPLEMENTATION OF THE NATO/EAPC POLICY ON WOMEN PEACE AND SECURITY. URL: https://www.nato.int/nato_static_fl2014/assets/pdf/pdft_2016_07/160718-wps-action-plan.pdf.

In the context of their partnership programmes with NATO, partners are encouraged to adopt specific goals that reflect the principles and support implementation of UNSCR 1325 and related Resolutions. They are also encouraged to make use of the training and education activities developed by Allied Command Transformation, which has ensured that a gender perspective is included in the curriculum of NATO Training Centres and Centres of Excellence as well as in pre-deployment training.

Though the Alliance has no influence on measures or policies taken at national levels, it is required that all personnel – whether from Allied or partner countries – deployed in NATO-led operations and missions and serving within NATO structures are appropriately trained and meet required standards of behaviour.

Work among Allies and partner countries is not only about developing gender awareness in crisis-management or peace-support operations. An increasingly important focus is on strengthening gender perspectives, and promoting gender equality and the participation of women in defence and security institutions as well as the armed forces.

UNSCR 1325 and related Resolutions are also being implemented in crisis management and in NATO-led operations and missions. The Alliance has nominated gender advisers at both Strategic Commands – Allied Command Operations and Allied Command Transformation – as well as in subordinate commands and the operations in Afghanistan and Kosovo. Gender advisors support commanders to ensure that a gender perspective is integrated into all aspects of an operation. An important milestone was reached in May 2015, when NATO's first ever female Commander was appointed to NATO's headquarters in Sarajevo, Bosnia and Herzegovina.

Along with having more female personnel on the ground, these measures have had a positive effect on the implementation of UNSCR 1325 in theatres of operation. For instance, in Afghanistan, female soldiers are able to connect with members of the population otherwise closed off from their male colleagues. Gender advisers have also sought to promote public awareness and ensure that the gender perspective is incorporated in operational planning documents throughout the chain of command, as well as in documents outlining NATO's current and future partnership with Afghanistan.

In 2014, the Special Representative for Women, Peace and Security and the Human Resource Policy and Diversity Officer launched the NATO Women's Professional Network (NWPN) and Mentoring Programme. The aim of the NWPN is to promote a common corporate culture and give training, development and mentoring opportunities to women. The Mentoring Programme seeks to help increase the pool of qualified female candidates and to break down structural barriers that may exist between different services and types of staff.

In 2015, NATO and its partners adopted, for the first time, Military Guidelines on the protection of, and response to, conflict-related sexual– and gender-based violence. Gender-related issues are also increasingly being incorporated in exercises. For example, NATO's Crisis Management Exercise in 2015 included – for the first time ever – a gender perspective as one of its objectives. These annual exercises are designed to practise the Alliance's crisis management procedures at the strategic political level, and involve civilian and military staffs in Allied capitals, at NATO Headquarters, and in both Strategic Commands.

The implementation of UNSCR 1325 and related Resolutions cuts across various divisions and governing bodies within NATO Headquarters, as well as in the Strategic Commands. All these entities together are responsible for monitoring and reporting the progress made by the Alliance. For this purpose, a Women, Peace and Security Task Force was established under the guidance and responsibility of the Special Representative for Women, Peace and Security. A specific body was also set up to advise the Military Committee.

In sum, the mechanisms at NATO's disposal to implement the UNSC Resolutions are:

1. The Secretary General's Special Representative for Women, Peace and Security serves as the high-level focal point on all aspects of NATO's gender-related work. This position was created in 2012, and made permanent from September 2014. It is currently held by Clare Hutchinson;

2. A task force bringing together civilian and military staff across the Headquarters;

3. A gender office (NATO Office on Gender Perspectives) and an advisory committee of experts (NATO Committee on Gender Perspectives) on the military side, tasked with promoting gender

mainstreaming in the design and implementation, monitoring and evaluation of policies, programmes and military operations;

4. A working group led by Allied Command Operations to assess means to further incorporate UNSCR 1325 and related Resolutions into operational planning and execution;

5. Gender advisers deployed at different levels of NATO's military command structure, including operational headquarters;

6. A number of relevant committees that develop and review specific and overall policy;

7. The NATO Science for Peace and Security (SPS) Programme promotes concrete, practical cooperation on gender-related issues among NATO member and partner countries, through collaborative multi-year projects, training courses, study institutes and workshops.

CONCLUSIONS

The United Nations has adopted a number of resolutions that consolidate the main provisions to overcome gender inequality, which, although advisory, are widely implemented in the national legislation of the countries of the world.

Obvious is that for the United Nations gender equality and empower all women and girls is one of the priorities goals. This is an international organization urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict for peace and security. Cooperating with the European Union, the United Nations are embarking multi-year initiative focused on eliminating all forms of violence against women and girls, in line with the 2030 Agenda for Sustainable Development.

NATO is working with the United Nations and taking steps to promote gender equality and empower all women and girls to identify and remove barriers to women within NATO's policies and programmes. The North Atlantic Alliance sought to ensure equal participation of women at all levels ranging from conflict prevention to post-conflict reconstruction, peace and security, in attract and retain women, especially in senior leadership positions, the prevention of sexual violence and accountability

to end impunity for incidents of sexual violence in conflict, reflect principles by UNSCR 1325 and related Resolutions.

Consequently, in the process of solving the issue of gender equality and empower all women and girls in the sphere of peace and security, not only the state but also international organizations involved in the formation and improvement of the national legal mechanism for ensuring the rights of every person irrespective of gender, provide recomendation on implementation the best world experience, exercising supervision and control.

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Information about the author
Kaminska N. V.
Doctor of Law, Professor,
Professor at the Department of Constitutional Law and Human Rights
of the National Academy of Internal Affairs
1, Solomianska pl., Kyiv, 03035, Ukraine

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CRIMINAL LEGAL PROTECTION OF PERSON'S HEALTH AS A CONSTITUTIONAL GUARANTEE OF THE PROVISION OF HUMAN RIGHTS AND FREEDOMS

Katerynchuk K. V.

INTRODUCTION

The Constitution of Ukraine proclaims not only life but health as well (Article 3) as the highest social value and impose obligations on the state to provide their protection (Article 49) by all legal means (civil law, labor law, administrative law etc.)[1]. The Constitution of Ukraine is the Basic Law of our state and all laws without exception as well as all normative-legal act are based on it, the Criminal Code of Ukraine is included[2] (hereinafter referred to as the CC of Ukraine). For that reason Part 1 Article 3 of the CC of Ukraine states the provision that the CC of Ukraine is based on the Constitution of Ukraine and widely recognized principles and norms of international law.

As one of the most preferential direction of state activity according to the Law of Ukraine "The Basics of Legislation of Ukraine on Health Protection"[3], health protection is a system of measures carried out by state authorities and self-government bodies, their officials, health protection institutions, physical persons – entrepreneur, registered under the established procedure and obtained a license on economic activity on medical practice, medical and pharmaceutical employees, public associations and citizens with the aim of preservation and renewal of physiological and psychological functions, optimal capability for work and social activity of a person at maximum biologically possible individual life expectancy (Clause 8 Part 1 Article 3). The goal stated in the Law, in our opinion, should be specified in the part of preservation and rehabilitation of physiological and renewal of mental activity.

[1] Конституція України: Закон від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

[2] Кримінальний кодекс України: Закон від 05.04.2001 р. № 2341-ІІІ. Дата оновлення: 26.02.2019 р. URL: http://zakon4.rada.gov.ua/laws/show/2341-14.

[3] Основи законодавства України про охорону здоров'я: Закон України від 19.11.1992 р. № 2801-XII. Дата оновлення 01.01.2019 р. URL: http://zakon5.rada.gov.ua/laws/show/2801-12.

In Ukraine, at the state level, a complete organizational and legal system is approved and is functioning. Formation and provision of health care policy is imposed on the state, the main functions of which are the following:

1) Control and supervision over observance of the legislation on health care through specially authorized executive bodies;

2) Prevention of infectious diseases, dangerous for people.

The formation of public health policy is carried out by the Verkhovna Rada of Ukraine, by consolidating constitutional and legislative principles of health care, defining its goals, main tasks, directions, principles and priorities, establishing standards and amounts of budget financing, creating a system of appropriate credit– financial, tax, customs and other regulators, approval of national health programs (Article 13). In turn, the Cabinet of Ministers of Ukraine organizes development and implementation of state specialized programs [4], creates economic, legal and organizational mechanisms stimulating effective activity in heal care field, provides the development of chain of health care institutions, concludes international treaties and coordinates international cooperation on health care issues, as well as executes other powers within its competence, vested on executive bodies in the field of health care (Article 14). Health care authorities (the central body of executive power and other central bodies of executive power) implement state policy in the field of health care.

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Improvement of Legislation Regarding Activities of Health Care Institutions" [5] provides definition of health care institution – this is a legal entity of any form of ownership and organizational-legal form or its separated unit providing medical care to population on the

[4] Катеринчук К. В. Державні програми, як основа запобігання злочинних посягань на здоров'я особи. *Проблемні питання стану дотримання захисту прав людини в Україні*: зб. матеріалів IV Всеукр. наук.-практ. конф. (м. Київ, 5 груд. 2013 р.). Ч. 1. С. 139–140; Загальнодержавна програма адаптації законодавства України до законодавства Європейського Союзу (Закон України від 18.03.2004 р. № 1629-IV). *Відомості Верховної Ради України*. 2004. № 29. Ст. 367; Стратегія наукових досліджень Національної академії правових наук України на 2016–2020 роки: затв. Постановою регіональних зборів Національної академії правових наук України від 03.03.2016 р. URL: http://www.aprnu.kharkiv.org/doc/strategiya.pdf; Концепція Загальнодержавної програми адаптації законодавства України до законодавства Європейського Союзу: Закон України від 21.11.2002 р. № 228-15. *Відомості Верховної Ради України*. 2003. № 3. Ст. 12.

[5] Про внесення змін до деяких законодавчих актів України щодо удосконалення законодавства з питань діяльності закладів охорони здоров'я: Закон України від 06.04.2017 р. № 2002–VIII. URL: http://zakon.rada.gov.ua/laws/show/2002-19.

basis of a relevant license and professional activities of medical (pharmaceutical) employees. Depending on the form of ownership, health care institutions are formed and operate as public, municipal, private or mixed-form property.

1. Constitutional and Criminal-Legal Grounds of Person's Health Care Protection in Ukraine

The norms of criminal legislation play an important role in this system determining deeds, which are socially dangerous and criminal, and criminal punitive consequences. Taking into account the interrelation of these norms, they form a separate coordinated system – an independent criminal-legal institute, the basis of which are norms providing liability for deeds with their direct object being person's health. First of all, these are the crimes provided by Article 121 "Intentional grave physical injury", Article 122 "Intentional physical injury of middle gravity", Article 123 "Intentional grave or physical injury of middle gravity caused in a state of intense emotional distress", Article 124 "Intentional grave physical injury in excess of the boundaries of necessary defense or in case of exceeding the measures necessary for detention of a criminal", Article 125 "Intentional trivial physical injury", Article 126 "Blows and Torment", Article 126-1 "Domestic violence", Article 127 "Torture", Article 130 "Contamination with a human immunodeficiency virus or other incurable infectious disease" and Article 133 "Contamination with sexually transmitted disease" of the Criminal Code of Ukraine.

For example, Article 27 of the Constitution of Ukraine stipulates the provision according to which everyone has the right to protect their lives and health, life and health of other people from unlawful infringement. The criminal legal guarantee of this constitutional norm is the norm of the Criminal Code of Ukraine, enshrined in Article 124 "Intentional grave physical injury in excess of the boundaries of necessary defense or in case of exceeding the measures necessary for detention of a criminal" of the Criminal Code of Ukraine. Therefore, any person or other persons has the right to protect their health from unlawful violence, this may be carried out in case of necessary defense or emergency.

In addition, the Constitution of Ukraine protects a person and their health from crimes committed on specific grounds – racial, national, religious etc. In separate criminal-legal norms aimed at person's health

protection, criminal liability is provided for crimes committed on the grounds of racial, national and religious intolerance (Part 2 of Article 121, Part 2 of Article 122, Part 2 of Article 126 and Part 2 of Article 127 of the Criminal Code of Ukraine). According to N. V. Uvarova, "under crimes against persons' life and health committed on grounds of racial, national or religious intolerance, it is proposed to understand socially dangerous, unlawful, guilty deeds against person's life and health committed by the subject of crime based on racial, national or religious intolerance" [6]. "Under actions aimed at incitement to national, racial or religious hatred and humiliation of national honor and dignity should be understood any action which purpose is to significantly increase the hostility of certain groups of population, a sense of enmity and disgust for other ethnicities or racial groups or religious denominations, humiliation of positive qualities of a particular nation in comparison with others" [7].

These innovations in relation to crimes against person's health on grounds of racial, national and religious intolerance (2009) are reflected in the provisions of Article 24 and 35 of the Constitution of Ukraine. So, citizens have equal constitutional rights and freedoms and are equal before the law. There can be no privileges or restrictions based on race, skin color, political, religious or other beliefs, gender, ethnic or social origin, property status, place of residence, language or other grounds (Article 24). "Equality and impermissibility of a person's discrimination is not only constitutional principles of a national legal system of Ukraine, but also the fundamental values of the international community, as emphasized in international legal acts on the protection of human and civil rights and freedoms, in particular, in the International Covenant on Civil and Political Rights, 1966 (Articles 14, 26), the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (Article 14), Protocol № 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Article 1), ratified by Ukraine, and in the Universal Declaration of Human Rights 1948 (Articles 1, 2, 7)" [8].

[6] Уварова Н. В. Кримінальна відповідальність за злочини проти життя та здоров'я особи, вчинені з мотивів расової, національної чи релігійної нетерпимості: дис. … канд. юрид. наук. Дніпропетровськ, 2012. с. 51.

[7] Науково-практичний коментар Кримінального кодексу України / за ред. М. І. Мельника, М. І. Хавронюка. 9-те вид., переробл. та доповн. Київ: Юридична думка, 2012. с. 444.

[8] Рішення Конституційного Суду України 12.04.2012 р. № 9-рп/2012. URL: http://zakon4.rada.gov.ua/.

Article 35 of the Constitution of Ukraine stipulates that everyone has the right to freedom of thought and religion. This right includes the freedom to profess any religion or not to profess any, to freely arrange religious cults and ritual ceremonies individually or collectively, to conduct religious activities. "The exercise of this right may be limited by law only in the interests of protecting public order, health and morality of population or protecting the rights and freedoms of other people" [9].

With the adoption of the Declaration on State Sovereignty and proclamation of the Act of Independence of Ukraine in 1991, Ukraine took a path of democratic society development. Adoption of the Constitution of Ukraine in 1996 is the evidence of this, in which the section "Rights, freedoms of a person and a citizen" includes personal rights, in particular, the right to respect for human dignity (Article 28 of the Constitution of Ukraine), namely, everyone has the right to respect to their dignity. No one shall be subjected to torture, cruel, inhuman or such that degrading their dignity, treatment or punishment. For the first time in the Ukrainian legislation an absolute ban of tortures was envisaged. In Article 127 of the Criminal Code of Ukraine of 2001 also provides for the crime of "tortures".

The ban of torture, cruel, inhuman or such that degrading their dignity, treatment or punishment is absolute and has no exceptions, and therefore does not allow violations during the war or other state of emergency stipulated in Article 64 of the Constitution of Ukraine. The constitutional rights and freedoms of a person and a citizen can not be limited except in cases stipulated by the Constitution of Ukraine. Under the conditions of a martial law or a state of emergency, certain restrictions of rights and freedoms may be established, indicating the term of validity of these restrictions. The rights and freedoms provided by Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 59, 60, 61, 62, 63 of this Constitution can not be limited[10]. This provision reveals the essence of one of the most complicated problems of realizing the protection of rights and freedoms of a person and a citizen – the problem of their restriction. The above interpretation of human rights proves the fact that they can not be restricted in any circumstances.

[9] Конституція України: наук.-практ. комент. / Академія правових наук України. Харків: Право; Київ: Ін-Юре, 2003. с. 189.

[10] Конституція України: Закон від 28.06.1996 р. № 254к/96-ВР. Дата оновлення: 21.02.2019 р. URL: http://zakon2.rada.gov.ua/laws/show/254к/96-вр.

In the context of the fundamental human right to life and health and other rights and freedoms (Part 1, Article 3 of the Constitution of Ukraine), determined by the natural human right, determine the content and orientation of the state activity. Due to the fact that one of the primary preconditions for human life activity is person's health, then, while protecting this right, the Ukrainian lawmaker approves these rights by consolidating them in the laws of Ukraine. The right of a person to legal protection of a person from contamination by a human immunodeficiency virus or other infectious disease and contamination with a sexually transmitted disease is not an exception that is provided by the Criminal Code of Ukraine in Article 130 "Contamination with a human immunodeficiency virus or other incurable infectious disease" and Article 133 "Contamination with sexually transmitted disease" [11].

Therefore, the provisions of the Constitution of Ukraine on protection of person's health from criminal infringement were reflected in the Criminal Code of Ukraine. In section II "Crimes against person's life and health", the Criminal Code of Ukraine distinguishes some institutions and the subject of our study is one of them – crimes against person's health. The lawmaker separates them into an individual institution depending on possible consequences, some of which are physical injury. The following degrees of physical injury are distinguished: grave, of middle gravity, and trivial physical injury. The basis for the gravity of physical injury is the dangerousness of damage to life, damage to health, and the duration of a health disorder. The following criteria for determining the gravity of physical injuries are also used: morbid anatomical (medical); economic and aesthetic.

Part 1 of Article 121 "Intentional grave physical injury" of the Criminal Code of Ukraine stipulates not only criminal liability for their commission, but also their features are determined: 1) dangerous to life at the time of commission; 2) causing the loss of any body or its functions; 3) mental illness; 4) lasting loss of working capacity not less than for one third; 5) abortion; 6) irrecoverable mutilation of face. In the disposition of Part 2 of this article one of possible consequences of intentional grave physical injury is provided, namely, death of a victim.

[11] Катеринчук К. В. Вітчизняне законодавство про кримінальну відповідальність щодо охорони здоров'я особи: офіційне та неофіційне тлумачення. *Наук. вісн. Ужгород. нац. ун-ту*. 2013. № 4 (88). Ч. 2. Кн. 1. С. 43–46.

Part 1 of Article 122 “Intentional physical injury of middle gravity” of the Criminal Code of Ukraine provides for criminal liability. The features of such physical injury are absence of danger to life and the consequences provided for in the disposition of Part 1 of Article 121 of the Criminal Code of Ukraine, but such that caused a lasting health disorder or a significant sustained loss of working capacity less than for one third. Article 125 of the Criminal Code of Ukraine specifies types of trivial physical injury, namely: trivial physical injury caused short-term health disorders or minor loss of working capacity (Part 2) and trivial physical injury, which did cause in these consequences (Part 1). Article 123 “Intentional grave or physical injury of middle gravity caused in a state of intense emotional distress” and Article 124 “Intentional grave physical injury in excess of the boundaries of necessary defense or in case of exceeding the measures necessary for detention of a criminal” of the Criminal Code of Ukraine provide for the privileged composition of crimes against person’s health. The theory of criminal law has not used the term “privileged” for crimes against person’s health, but it is widely used in crimes against person’s life. In our opinion, it is advisable to apply it also to crimes against person’s health, since the mitigation of criminal liability for this kind of physical injury is determined by the following circumstances: 1) person’s socially dangerous deed provoked by an unlawful violence or a serious offense from the victim’s side; 2) the subjective part of the crime composition is characterized by the emotional state of a subject (Article 123 of the Criminal Code of Ukraine); 3) in case of exceeding the limits of necessary defense (the limits of protection in a situation of emergency) and measures necessary for the detention of a criminal (Article 124 of the Criminal Code of Ukraine).

According to the structure peculiarities of the objective side, the crime against person’s health has a material composition (Articles 121-128, parts 2-4 of Article 130, Article 133 of the Criminal Code of Ukraine) and a formal composition (Article 121 of the Criminal Code of Ukraine in part – a danger to life at the moment of causing and part 1 of Article 130 of the Criminal Code of Ukraine).

According to the form of guilt, physical injury can be divided into intentional and committed through negligence. The intentional ones include crimes involving criminal liability for physical injury in Article 121 “Intentional grave physical injury”, Article 122 “Intentional

physical injury of middle gravity", Article 123 "Intentional grave or physical injury of middle gravity caused in a state of intense emotional distress", Article 124 "Intentional grave physical injury in excess of the boundaries of necessary defense or in case of exceeding the measures necessary for detention of a criminal", Article 125 "Intentional trivial physical injury" and Article 126-1 "Domestic violence" of the Criminal Code of Ukraine.

Through negligence, according to Article 128 of the Criminal Code of Ukraine, criminal liability appears in two cases only – these are grave and of middle gravity physical injury.

According to the consequences committed, the Criminal Code of Ukraine provides for: physical injuries, physical pain, severe physical pain and physical or moral suffering. According to V. M. Smitienko[12], Article 130 "Contamination with a human immunodeficiency virus or other incurable infectious disease" and Article 133 "Contamination with sexually transmitted disease" of the Criminal Code of Ukraine are defined as "special kind" of physical injuries – contamination by certain types of dangerous infectious diseases.

2. Classification of Crimes against Person's Health

At the same time as a result of analysis of this issue it is possible to make a conclusion that there is no unified classification of crimes against person's health in Ukraine. Most of the scholars, having studied such issue, are giving more and more new suggestions on classification of crimes against person's health, justifying them in a different way. Since there is no a single point of view on this problem, we suggest studying all available teachings.

The Criminal Code of the USSR in 1922, 1927 and the Criminal Code of the USSR in 1960[13] had a certain structural feature, in contrast to the Criminal Code of Ukraine in 2001. It was about the fact that a lawmaker, establishing liability for crimes against person's health, before the adoption of the Criminal Code of Ukraine in 2001, had placed a list of these and other elements of crimes in section III "Crimes against life, health, freedom and dignity of a person" exactly, thus strengthening the criminal-legal protection of a person. During the period of "evolution" of

[12] Смитиенко В. Н. Уголовно-правовая охрана здоровья населения в СССР. Киев: Выща шк., Голов. изд-во, 1989. с. 125.

[13] У тексті підручника використано скорочені історичні назви країн.

the Criminal Code on crimes against person's health, the features of physical injury were formulated more clearly, criminal liability for domestic violence, torture and placing of a person in danger of sexually transmitted disease was established.

The examination of a special literature on this topic on crimes against a person makes it possible to make a conclusion that the compositions of crimes in this category were divided by scientists into generic and direct objects. In the Criminal Code of the USSR, crimes against person's health were contained in one section together with crimes against life (which are available in the current CC of Ukraine), crimes against sexual freedom and sexual inviolability, crimes against personal freedom, honor and dignity. In this regard, their group belonging varies considerably from that proposed today, namely: in all cases, the name of the group of crimes against a person sometimes has a stylistic feature, or different scholars attributed this or that crime against person's health to different groups at different times.

For example, the scholars of the RSFSR and the USSR identified the following groups of crimes against a person: 1) crimes against life; 2) physical injury; 3) criminal deeds, dangerous for life and health; 4) sexual crimes; 5) crimes against personal freedom; 6) crimes against dignity of a person. The second group of crimes against a person included all kinds of physical injuries, intentional blows and hits, as well as contamination with sexually transmitted disease as a special type of physical injury. An article provided for criminal liability for intentional placing of another person in danger of contamination with sexually transmitted disease, according to Z. A. Vyshinska and A. A. Piontkovsky, belonged to a group of crimes that constitute a danger to life and health[14]. Later on, scholars attributed this crime to crimes against person's health, and this group of crimes was defined as crimes against person's health особи [15], but not physical injury, as it was mentioned earlier.

During the next years, the division of crimes against a person, including the group of crimes against person's health, did not change, however, the following acts were criminalized by Decree of the Presidium

[14] Советское уголовное право: Часть особенная: учеб. для юрид. вузов // ВИЮН М-ва юстиции СССР. Москва: Госюриздат,1951. с. 176–209.

[15] Советское уголовное право: Часть особенная: учеб. для юрид. вузов // Изд-во Моск. ун-та: Госюриздат,1957. с. 182–199; Советское уголовное право: Часть особенная: учеб. для юрид. ин-тов. Ленинград, 1959. с. 140–167.

of the Verkhovna Rada of the USSR "On Strengthening Responsibility for the Spreading of Sexually Transmitted Diseases" on October 1, 1971: contamination with sexually transmitted disease (Part 2 of Article 115), putting in danger of such contamination (Part 1 of Article 115) and avoidance of the treatment of sexually transmitted diseases (Article 115[1]). After changes made in the Criminal Code of Ukraine the scholars (M. D. Durmanov, O.V. Kuznetsov, S. V. Borodin, M. I. Bazhanov, V. V. Stashis, Yu. I. Liapunov) consider the crimes mentioned in the group of crimes against person's health[16].

In the middle of the 90s, even before the adoption of the Criminal Code of Ukraine in 2001, N. V. Chernyshova, M. V. Volodko, and M. A. Khazin advocated the idea that the crimes of section III are divided into six groups. However, everyone proposed own peculiarity of article distribution to these groups. Thus, the second group, namely, crimes against health, included all kinds of physical injuries, blows, torment, contamination with sexually transmitted disease, avoidance of the treatment of a sexually transmitted disease, contamination with a human immunodeficiency virus, contamination with a human immunodeficiency virus by medical, pharmaceutical and employees in other fields[17].

Later on, most scholars supported the position of their predecessors as for the division of crimes against a person into six groups. A special distinction was that the group – sexual crimes were renamed into crimes that infringe on sexual inviolability, and sexual freedom. Moreover, it was proposed to divide the crimes against health into three subgroups. The main (by the number of articles and real manifestations) subgroup was physical injuries. The second subgroup included such crimes as blows and torment. The third covered crimes, provided for a special type of harm to

[16] Советское уголовное право: Часть особенная: учебник / В. Д. Меньшагин, В. Н. Кудрявцев, Б. А. Куринов и др.; под ред. В. Д. Меньшагина и др. М.: Изд-во МГУ, 1975. С. 166–168; Кузнецов А. В. Уголовное право и личность: монография. М.: Юрид. лит., 1977. С. 139; Советское уголовное право: Часть особенная: учебник / под ред. Г. А. Кригера, Б. А. Куринова, Ю. М. Ткачевского. М.: Изд-во МГУ, 1982. С. 139; Советское уголовное право: Часть особенная: : учебник. / С. В. Бородин, Ю. А. Воронин, Р. Р. Галиакбаров и др.; отв. ред. М. И. Ковалев. М.: Юрид. лит., 1983. С. 124; Уголовное право Украинской ССР на современном этапе. Часть Особенная / АН УССР. Ин-т гос. и права; А. Я. Светлов, М. И. Бажанов, В. В. Сташис и др.; отв. ред. А. Я. Светлов, В. В. Сташис. Киев: Наук. думка, 1985. С. 108–137; Советское уголовное право: Особенная часть: учебник. / Н. В. Васильев, М. А. Гельфер, П. И. Гришаев и др.; под ред. П. И. Гришаева, Б. В. Здравомыслова. М.: Юрид. лит.,1988. С. 161–172; Уголовное право УССР: Особенная часть: учебник / Ю. В. Александров и др. / под ред. М. И. Бажанова и др. Киев: Вища шк., 1989.С. 163–176.

[17] Кримінальне право України: тези лекцій і практ. завдання для курсантів Київ. училища міліції МВС України / Н. В. Чернишова, М. В. Володько, М. А. Хазін; за ред. В. М. Бовсуновського. Київ: Наук. думка, 1995. с. 263–282.

health – contamination with a sexually transmitted disease and human immunodeficiency virus. These are crimes such as contamination with a sexually transmitted disease, avoidance of the treatment of a sexually transmitted disease, contamination with human immunodeficiency virus, contamination with a human immunodeficiency virus by medical, pharmaceutical and employees of other fields, disclosure of information about medical examination for human immunodeficiency virus contamination and its consequences. Scientists note that these articles, by their characteristics, are such that they put in danger person's life and health, and avoidance of the treatment of a sexually transmitted disease, contamination with the human immunodeficiency virus affects person's dignity[18].

Other scientists distinguish crimes against personal safety in a separate group, namely: conscious putting in danger of contamination with a sexually transmitted disease, avoidance of the treatment of a sexually transmitted disease, contamination with a human immunodeficiency virus, avoidance of the treatment of sexually transmitted disease and contamination with a human immunodeficiency virus[19].

The classification of crimes by groups changed with the adoption of the Criminal Code of Ukraine in 2001. Due to the fact that a national lawmaker changed the Code structurally, distinguishing crimes against person's life and health in a separate section II, the issue of classification of crimes against person's health remained relevant at the same time. Thus, the crimes against person's health (M. I. Bazhanov, V. V. Stashis, O. S. Sotula, N. O. Guturova, V. I. Kasyniuk, V. O. Glushkov) include such crimes of the current Criminal Code of Ukraine: various types of physical injuries (Articles 121-125, 128), blows and torment (Article 126), tortures (Article 127), special types of physical injury: contamination with human immunodeficiency virus or other incurable infectious disease (Art. 130), contamination with a sexually transmitted disease (Article 133)[20].

[18] Кримінальне право України. Особлива частина: підручник / Ю. В. Александров, В. І. Антипов, М. В. Володько та ін.; відп. ред. В. І. Шакун. Київ: Правові джерела, 1998. с. 153

[19] Кримінальне право України. Особлива частина: підручник / Г. В. Андрусів та ін.; за ред. П. С. Матишевського та ін.; Київ. нац. ун-т імені Тараса Шевченка. Юридичний фак. 2 вид. Київ: Юрінком Інтер, 1999. с. 185–204.

[20] Велика українська юридична енциклопедія: у 20 т. Харків: Право, 2016. Т. 17: Кримінальне право / редкол.: В. Я. Тацій (голова), В. І. Борисов (заст. голови) та ін.; Нац. акад. прав. наук України; Ін-т держави і права ім. В. М. Корецького НАН України; Нац. юрид. ун-т ім. Ярослава Мудрого. 2017. с. 317–318; Кримінальне право України. Загальна та Особлива частини: навч. посіб. / В. М. Стратонов,

O. A. Chuvakov proposes to supplement this classification of crimes against person's health by Article 145 (Illegal disclosure of medical secrets) to the Criminal Code of Ukraine[21]. According to S. I. Seletsky, the crimes against person's health include all kinds of physical injuries, blows and torment, torture, a threat of murder, leaving in danger, not providing assistance to a person in a state of danger to life[22].

Detailed analysis of the composition features of crimes provided by Articles 121-145 of the Criminal Code of Ukraine (first of all, generic and direct objects of composition of crimes, forms of guilt, the nature of criminal consequences), proves that these crimes are diverse and not always directly and immediately infringe on the victim's health. G. E. Boldar, V. O. Hatseliuk and Yu. O. Kucher propose these norms to be united into groups:

1) Crimes that cause damage to person's health (Article 121-129 of the Criminal Code of Ukraine);

2) Crimes that cause harm to person's health, committed in the field of protection of person's life and health, from certain types of dangerous infectious diseases (Articles 130; 131; 133 of the Criminal Code of Ukraine);

3) Crimes that cause damage to person's health committed in the field of provision of medical services (Article 134; 138-144 of the Criminal Code of Ukraine);

4) Crimes that cause damage to person's health as a result of leaving the person without assistance or as a result of guilty person improper execution of their duties (Article 135-137 of the Criminal Code of Ukraine);

5) Crimes in the field of health protection related to the unlawful dissemination of medical secrets (Article 132; 145 of the Criminal Code of Ukraine)[23].

О. С. Сотула; заг. ред. В. М. Стратонов; Херсон. держ. ун-т. Київ: Істина, 2007. с. 187; Кримінальне право України. Особлива частина: підручник / Ю. В. Александров та ін.; ред. М. І. Мельник, В. А. Клименко. 3-тє вид., перероб. і допов. Київ: Атіка, 2009. с. 47; Кримінальне право України. Особлива частина: підручник / Ю. В. Баулін та ін.; за ред. В. В. Сташиса, В. Я. Тація. 4 вид., перероб. і допов. Харків: Право, 2010. с. 47–60; Уголовное право Украины. Особенная часть: учебник / М. И. Бажанов др.; под ред. М. И. Бажанова; Нац. юрид. акад. Украины им. Ярослава Мудрого. Киев: Юринком Интер, 2003. с. 49.

[21] Кримінальне право України: Особлива частина: підручник / за заг. ред. д-ра юрид. наук, проф., засл. діяча науки і техніки України Є. Л. Стрельцова. Харків: Одіссей, 2009. с. 42.

[22] Селецький С. І. Кримінальне право України. Особлива частина: навч. посіб. Київ: Центр учбової літ., 2012. с. 28.

[23] Кримінальне право. Особлива частина: підручник / за ред. О. О. Дудорова, Є. О. Письменського. 2 вид. Київ: «ВД «Дакор», 2013. с. 66–67.

O. M. Dzhuzha and A. V. Savchenko offer the following classification of crimes against person's health:

1) Crimes against person's health (Articles 121-128; 130; 133 of the Criminal Code of Ukraine);

1.1) Physical injury (Articles 121-125; 128 of the Criminal Code of Ukraine);

1.2) Causing physical or moral suffering (Article 126; 127 of the Criminal Code of Ukraine);

1.3) Contamination with social diseases (Article 130; 133 of the Criminal Code of Ukraine)[24].

E. V. Kornienko includes in crimes against health such deeds that do not harm the health directly, but put it in danger, namely: a threat of murder (Article 129 of the Criminal Code of Ukraine); carrying out an abortion by a person who does not have special medical education (Part 1 of Article 134 of the Criminal Code of Ukraine); conscious putting another person in danger of contamination with a human immunodeficiency virus or other incurable infectious disease that is dangerous to human life (Part 1 of Article 130 of the Criminal Code of Ukraine)[25]. Somewhat different classification was proposed by V. O. Gatseliuk. In his opinion, the crimes against person's health include: 1) physical injury (Articles 121-125; 128); 2) causing physical or moral suffering (Articles 126, 127, 129); 3) contamination with special diseases (Articles 130-131)[26]. The classification given above for crime compositions against person's health leads to a number of questions. Firstly, the crime, for which liability is provided in Article 131 "Improper performance of professional duties caused contamination of the person by a human immunodeficiency virus or other incurable infectious disease" is indicated in the group "contamination with special diseases" and then duplicated in "crimes in the medical field". Secondly, the crime, for which liability is stipulated in Article 133 "Contamination with sexually transmitted disease" is not mentioned at all, and the group, which includes

[24] Кваліфікація злочинів, підслідних органам внутрішніх справ: навч. посіб. / В. В. Коваленко, О. М. Джужа, А. В. Савченко, В. В. Кузнецов та ін.; за заг. ред. В. В. Коваленка; за наук. ред. О. М. Джужи, А. В. Савченка. Київ: Атіка, 2011. с. 9.

[25] Корнієнко Є. В. Кримінально-правова характеристика зараження вірусом імунодефіциту людини чи іншої невиліковної інфекційної хвороби: дис. … канд. юрид. наук. Київ, 2013. с. 73.

[26] Гацелюк В. О. Щодо класифікації злочинів проти здоров'я у КК України 2001 року. *Проблеми застосування, удосконалення та подальшої гармонізації із законодавством європейських країн*: матеріали міжнар. наук.-практ. конф. 10 років чинності Кримінального кодексу України (м. Харків, 13–14 жовт. 2011 р.) / редкол.: В. Я. Тацій (голов. ред.), В. І. Борисов (заст. голов. ред.) та ін. Харків: Право, 2011. С. 394–400.

crimes, for which liability is stipulated in Article 126 "Blows and torment" and Article 127 "Torture" belong to a group of crimes against person's health causing physical or moral suffering. Unfortunately, the author of this classification V. O. Gatseliuk does not indicate one of the consequences – physical pain, which is a compulsory feature of these compositions of crimes. In addition, Article 129 of the Criminal Code of Ukraine "A threat of murder", in our opinion, can not be included in this subgroup, since this crime has another direct object. According to Ye.V. Fesenko, the crimes against person's health in relation to the specific object are divided into: 1) crimes against person's physical inviolability – this is a physical injury of varying degrees of gravity, blows and torment, as well as torture; 2) crimes against personal safety: a) general types of crimes against personal safety (Articles 129-136); b) crimes against personal safety, connected with violations of the established procedure for the performance of certain activities and the fulfillment of respective responsibilities (Articles 137-144, etc.)[27].

Therefore, according to the above-mentioned classification of crimes against person's life and health of section II of the Criminal Code of Ukraine, the opinion was established that the crimes against person's health include all types of physical injury (Articles 121-125, 128 of the Criminal Code of Ukraine), blows and torment (Article 126 of the Criminal Code of Ukraine), domestic violence (Article 126-1), torture (Article 127 of the Criminal Code of Ukraine), contamination with a human immunodeficiency virus or other incurable infectious disease (Article 130 of the Criminal Code of Ukraine) and contamination with a sexually transmitted disease (Article 133 of the Criminal Code of Ukraine)[28].

CONCLUSIONS

One of the priorities of our state, defined in Article 3 of the Constitution of Ukraine, is the protection of person's life and health. Since the independence of Ukraine, the concept of "the state exists for a person" has worked, namely, active steps are taken to ensure the protection of natural human rights – life and health. In order to effectively solve such

[27] Фесенко Є. В. Проблеми систематизації статей КК щодо відповідальності за злочини проти здоров'я особи та населення. *Кримінально-правова охорона життя та здоров'я особи*: матеріали наук.-практ. конф. (м. Харків, 22–23 квіт. 2004 р.) / редкол.: Сташис В. В. (голов. ред.) та ін. Київ – Харків: «Юринком Інтер», 2004. С. 137–140.

[28] Катеринчук Е. В. Классификация преступлений против здоровья человека. *Современный научный вестник*. 2014. № 44 (240). С. 42–50.

problems, the state must protect, make safe society against unlawful infringements on person's life and health. In this regard, the effective development of means aimed at protecting these benefits and an effective set of measures aimed at systematic counteraction to crimes against person's health are fundamental issues. The legal norms that form section II of the Special Part of the Criminal Code of Ukraine – crimes against persons' life and health and comply with the provisions of the Constitution of Ukraine have one of the key places.

Studying the features of classification of crimes against person's health, it was established that the scientists attributed these crimes to different groups in different periods of national legislation development. This feature is caused by the fact that these crimes were placed in other sections (chapters) by the lawmaker. At present, we include in the crimes against person's health all types of physical injuries (Articles 121-125, 128 of the Criminal Code of Ukraine), blows and torment (Article 126 of the Criminal Code of Ukraine), domestic violence (Article 126-1), torture (Article 127 of the Criminal Code of Ukraine), contamination by a human immunodeficiency virus or other incurable infectious disease (Article 130 of the Criminal Code of Ukraine) and contamination with a sexually transmitted disease (Article 133 of the Criminal Code of Ukraine).

SUMMARY

The analysis of constitutional norms in relation to person's health is carried out. It is determined that person's health protection is regulated by the Fundamentals of the Ukrainian legislation on health care as well as other norms of Ukrainian legislation on health care protection. It is proved that constitutional provisions on person's health protection are reflected in full in prohibitive norms of the Criminal Code of Ukraine.

The scope of criminal infringements in the field of person's health protection is outlined. It was emphasized that division of these crimes into groups is carried out depending on their structural placement in the Criminal Code of Ukraine in 2001 according to the generic object. The following groups of crimes are distinguished: 1) crimes against life; 2) crimes against person's health including all types of physical injuries (Articles 121-125, 128 of the Criminal Code of Ukraine), blows and torment (Article 126 of the Criminal Code of Ukraine), domestic violence (Article 126-1), torture (Article 127 of the Criminal Code of Ukraine), contamination by a human immunodeficiency virus or other incurable infectious disease (Article 130 of the Criminal Code of Ukraine) and

contamination with a sexually transmitted disease (Article 133 of the Criminal Code of Ukraine); 3) crimes putting in danger person's life and health.

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39. Фесенко Є. В. Проблеми систематизації статей КК щодо відповідальності за злочини проти здоров'я особи та населення. *Кримінально-правова охорона життя та здоров'я особи*: матеріали наук.-практ. конф. (м. Харків, 22–23 квіт. 2004 р.) / редкол.: Сташис В. В. (голов. ред.) та ін. Київ – Харків: «Юринком Інтер», 2004. С. 137–140.

40. Катеринчук Е. В. Классификация преступлений против здоровья человека. *Современный научный вестник*. 2014. № 44 (240). С. 42–50.

Information about the author:
Katerynchuk K. V.
Candidate of Juridical Sciences,
Assistant Professor at the Department of Special Legal Disciplines
of the Educational-Scientific Humanitarian Institute
of the V. I. Vernadsky Taurida National University
33, Ivana Kudri str., Kyiv, Ukraine

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CUSTOMERS' RIGHTS PROTECTION IN THE FIELD OF INSURANCE SERVICES UNDER UKRAINIAN LEGISLATION

Milovska N. V.

Legal regulation of one or other civil legal contracts, including contracts on insurance service provision, provides its legal determination, differentiation of subject matter, consolidation of form, rights and obligations, their responsibility for non-execution of contract terms and conditions etc. Exercise of civil rights and performance of obligations are carried out in different ways and by using various means, in various scope and sequence, it is limited by different time limits in any aspects as well[1].

Part 1of Article 12 of the Civil Code of Ukraine (hereinafter – the CC of Ukraine) points to the possibility of a free exercise of a civil right at sole discretion. This means that all issues connected with the use of subjective rights, including the scope and ways of their exercise, are solved by competent persons at their sole discretion. As O. O. Kot mentions, discretion in the context of exercise of a subjective civil right provides for awareness of a goal and specific ways of its realization by a subject as well as conscious decision-making, namely, a choice of one of behavior option within an existing subjective right[2].

A subjective civil right gives three opportunities to a competent person: firstly, the opportunity to take certain positive actions directly connected with the exercise of their fight; secondly, the opportunity to demand certain behavior from a person obliged directly; thirdly, the opportunity to appeal to the court with a claim to enforce a person obliged to execute their obligations or to protect a right from its violation from other person's side. In addition, O. O. Kot rightly notes, that exercise of a subjective right requires not only existence of this right but also a proper subject taking relevant actions[3].

[1] Вахонєва Т. М. Строки (терміни) у цивільному праві: дис. ... канд. юрид. наук. К., 2005. С. 61.

[2] Кот О. О. Здійснення та захист суб'єктивних цивільних прав: проблеми теорії та судової практики: монографія. К.: Алерта, 2017. С. 33.

[3] Кот О. О. Здійснення та захист суб'єктивних цивільних прав: проблеми теорії та судової практики: монографія. К.: Алерта, 2017. С. 39.

As it follows from Article 984 of the Civil Code of Ukraine, Article 354 of the Commercial Code of Ukraine and Article 16 of the Law of Ukraine "On Insurance"[4], the parties to the insurance contract are the insurer and the insured. Civil legislation consolidates one of the basic principles arising from the method of civil law regulation, – legal equality of participants of personal non-property and property relations. Legal equality is in the fact that each party of civil relations has own set of right and obligations and is independent, not subordinated to others[5].

In the field of insurance obligations, the principle of legal equality of participants in relevant legal relations is essential as well. However, in the practical aspect of this issue there may be a variety of deviations from the requirements of the legal equality principle. This is explained by the fact that the insurer as a professional participant in insurance relations can use own professional and economic potential to enforce the insured persons, who in the majority are economically weaker and less trained professionally, to agree to conditions proposed by the insurer, which are set in the text of an insurance contract and, of course, are more beneficial for the latter[6]. Therefore, in order to prevent violation of the parity (balance) of interests between the insurer and the insured persons, an insurance contract is concluded on the basis of insurance rules, which, despite the fact that they are developed by the insurer independently, are subject to approval by Authorized body, carrying out their examination for compliance of the provisions contained therein with requirements of the current legislation.

The relations between the insurer and the insured in contractual insurance obligations have a two-level structure. Firstly, the general terms of insurance are contained in rules of insurance. Secondly, its specific (direct) conditions are determined when concluding an insurance contract in accordance with the current legislation. Concluding an insurance contract, the parties have the right to independently determine its terms

[4] Закон України «Про особливості страхування сільськогосподарської продукції з державною підтримкою» від 9 лютого 2012 р. № 4391-VI // Відомості Верховної Ради України. 2012. № 41. Ст. 491.

[5] Суб'єкти цивільного права / За загальною редакцією академіка АПрН України Я. М. Шевченко. Х.: Харків юридичний, 2009. С. 445.

[6] Страхування: підручник / Керівник авт. колективу і наук. ред. С. С. Осадець. Вид. 2-ге, перероб. і доп. К.: КНЕУ, 2002. С. 207.

(content) without permission of a significant change in provisions contained in insurance rules.

According to Part 1 of Article 3 of the Law of Ukraine "On Insurance" and Part 2 of Article 984 of the Civil Code of Ukraine, the insured are legal entities and legally capable natural persons who have concluded insurance contracts with insurers or are insured persons in accordance with the legislation of Ukraine. Moreover, foreigners, stateless persons and foreign legal entities use the right to insurance protection on equal terms with citizens and legal entities of Ukraine at the territory of Ukraine. However, in L. K. Kinashchuk's opinion, such a definition is too narrow, since legal entities and natural persons who have an insurance interest and enter into relations with insurers according to law provisions, participate in the creation of an insurance fund by paying contributions and have the right to compensation in the event of an insured event should be recognized as the insured[7]. Similar opinions are expressed by other scientists who distinguish two main features characterizing the insured: the first one is the legal capacity of the insured, and the second one is in mandatory presence of insurance interest of the insured[8].

O. A. Shergunova emphasizes on the following special features of the insured as a participant in insurance relations: 1) it is a person who is always interested in insurance (has an interest in insurance), 2) it is a person who insures a certain interest (personal or a third person) as a insurance object, 3) it is a party to the insurance contract, 4) in case of insured event occurrence, acts as a creditor, regardless of whether the insured is a beneficiary or not; 5) throughout the term of the insurance contract validity the insured bears the burden of non-occurrence of an insured event[9].

The insured interest of the insured can be characterized by the following features: a) interest in preserving the object of insurance protection – life, health, working capacity, property, civil liability; b) interest in non-occurrence of the insured event, namely, that in the future no expenses related to compensation for damage caused to life, health, property of the insured, insured person or third party under the

[7] Кінащук Л. Л. Страхове право: підручник. К.: Атіка, 2007. С. 72.

[8] Гражданское право: учебник. В 4-х т. Т. 1 / Под ред. Е. А. Суханова. М., 2008. С. 201; Худяков А. И. Страховое право. СПб.: Издательство Р. Асланова «Юридический центр Пресс», 2004. С. 251.

[9] Шергунова Е. А. Гражданско-правовое положение основных участников страховых отношений: автореф. дис. ... канд. юрид. наук: 12.00.03. Курск, 2013. С. 23.

liability insurance contract arise; c) taking of active actions aimed at obtaining future monetary compensation to cover sudden expenses, by concluding an insurance contract.

In participation of natural persons in contractual insurance relations as the insured and a party to the insurance contract, the presence of civilian legal capacity in full scope is typical. In national doctrine of private law, a legal capacity of a natural person includes: capacity for concluding transactions, tort capacity, trans legal capacity, business capacity, test mental capacity, family capacity and cyber capacity as the ability of a person to be an active participant in IT-related relations (to be a member of social networks, to take part in interactive actions, etc.)[10]. It should be noted that the invalidity of transactions, parties to which are natural persons, is based on the same criteria as general rules of legal capacity occurrence, namely: age and mental attitude to actions taken. If the insured natural person during validity of an insurance contract based on a court decision is considered to have limited legal capacity or to be incapable, such person's rights and obligations of the insured are exercised, respectively, with the consent of the trustee or guardian. At the same time, any natural person can be an insured person, defined by the insured in the insurance contract.

Thus, the insured as a party to an insurance contract is a legal entity or legally capable natural person who voluntarily or on the demand of the law concludes an insurance contract with the insurer for the purpose of insurance protection of own legitimate interests or interests of another person related to life, health, working capacity, pension, possession, use and disposal of property, indemnification of damage caused to a natural person, person's property or property of a legal entity, in their favor or in favor of third parties.

The replacement of the insured in contractual insurance relations is carried out in accordance with provisions of the Law of Ukraine "On Insurance". So, according to Article 22 of the Law of Ukraine "On Insurance" in case of death of the insured, a natural person who concluded a contract of property insurance, the rights and obligations of the insured are transferred to persons who inherited the property. In other cases, the

[10] Харитонов Є. О., Харитонова О. І. Актуальні проблеми цивільної правосуб'єктності учасників інформаційно-комунікаційних відносин // Актуальні проблеми приватного права: матеріали XVII наук.-практ.конф., присвяч. 97-й річниці з дня народж. док. юрид. наук, проф. В. П. Маслова (Харків, 22 лютого 2019 р.). Харків: Право, 2019. С. 128.

rights and obligations of the insured may be transferred to another natural person or legal entity only with the consent of the insurer, unless otherwise provided by an insurance contract (Part 1 of Article 994 of the Civil Code of Ukraine). For example, in case № 29/138-09, on the claim of "Yu"LLC to CJSC "F" on obligation to execute the conditions of the voluntary insurance contract of motor vehicles and debt collection and moral damage, the Supreme Economic Court of Ukraine supported a legal position of the Economic Court of Appeal and remained unchanged the resolution of the court of appellate instance by its decision on December 17, 2009, indicating that rights and obligations of the insured can be transferred to another natural person or legal entity only with a consent of the insurer[11].

If a legal entity, the insurer, is terminated and its successors are established, then according to Part 1 of Article 995 of the Civil Code of Ukraine and Article 23 of the Law of Ukraine "On Insurance", rights and obligations of the insured are transferred to the successors. However, this rule applies to cases when a legal entity is terminated in the form of reorganization (Articles 106-109 of the Civil Code of Ukraine). Winding up of the insured-legal entity (Article 110 of the Civil Code of Ukraine) entails the termination of the insurance contract.

Some researchers consider the insured as a "weak" party in contractual insurance relations as well as consumers of insurance services and, accordingly, combine the issues of exercise and protection of their rights with exercise and protection of consumer rights. The adoption by the Cabinet of Ministers of Ukraine of the Concept for Protection of Consumer Rights of Non-Banking Financial Services,[12] including insurance services, facilitates this to a certain extent. In connection with this, the question arises about the possibility of extending to the insurance relations the norms of the Law of Ukraine "On Protection of Consumer Rights". In connection with this, a question about possibility of extending the norms of the Law of Ukraine "On Protection of Consumer Rights" to

[11] Постанова Вищого господарського суду України від 17.12.2009 р. у справі № 29/138-09. URL: http://pravoscope.com/act-postanova-29-138-09-shvec-v-o-17-12-2009-inshij-majnovij-spir-s (дата звернення: 20.04.2019).

[12] Розпорядження Кабінету Міністрів України «Про схвалення Концепції захисту прав споживачів небанківських фінансових послуг в Україні» від 3 вересня 2009 р. № 1026-р. // Офіційний вісник України. 2009. № 69. С. 30.

insurance relations arises [13]. Thus, according to one view, the Law of Ukraine "On Protection of Consumer Rights" does not cover legal relations arising from the Law of Ukraine "On Compulsory Insurance of Civil Liability of Owners of Land Transport Vehicles", since it is aimed at protecting life and health and property of third parties, while the Law of Ukraine "On Protection of Consumer Rights" regulates relations arising from contracts aimed at satisfying solely personal needs and legal relations on voluntary property insurance[14]. In accordance with the opposite legal view, since the insurer's activities subject to definition of service and an executor, contained in Part 1 of Article 1 of the Law of Ukraine "On Protection of Consumer Rights", then, if an insurance contract is aimed at satisfying personal needs of the insured natural person, such legal relations are regulated by the Law of Ukraine "On Protection of Consumer Rights" in the part not regulated by a special law[15]. This conclusion also applies to property insurance contracts, where the insured are natural persons, and relations are aimed at protecting the personal property interests of the insured or another person specified in the contract. This point of view is also enshrined in paragraph 2 of the Resolution of the Plenum of the Supreme Court "On practice of consideration of civil cases in claims for consumer rights protection", which states that, since the Law of Ukraine "On Protection of Consumer Rights" does not define certain limits of its effect, courts should keep in mind that relations regulated by it include, among others, those arising from insurance contracts[16]. By joining the second point of view, we believe that legislation on consumer protection is applied subsidiary in part not regulated by insurance law as a special law concerning regulation of relations with participation of insurance service consumers.

The issue of consumer rights protection is a subject of regulation in a range of international legal documents. One should distinguish the Consumer Protection Charter, adopted by the 25th session of the Consultative Assembly of the European Union on May 17, 1973

[13] Закон України «Про захист прав споживачів» від 12 травня 1991 р. № 1023-XII // Відомості Верховної Ради УРСР. 1991. № 30. Ст. 379.

[14] Мельник З. П., Романюк Я. М. Судова практика розгляду цивільних справ, що виникають з договорів страхування // Вісник Верховного Суду України. 2011. № 8 (132). С. 24.

[15] Жайворонок Т. Є., Павловська С. В. Судова практика розгляду цивільних справ про захист прав споживачів // Вісник Верховного Суду України. 2013. № 1 (149). С. 32.

[16] Постанова Пленуму Верховного Суду України «Про практику розгляду цивільних справ за позовами про захист прав споживачів» від 12 квітня 1996 р. № 5. URL: http://zakon1.rada.gov.ua/laws/show/v0005700-96 (дата звернення: 25.04.2019).

(resolution 543)[17], and "Guiding Principles for Protection of Consumer Interests", approved by The General Assembly of the United Nations on April 9, 1985 (resolution 39/248)[18]. The provisions of these international documents were reflected in the Law of Ukraine "On Protection of Consumer Rights" as well, according to clause 22 of Article 1 of which a consumer is a natural person who purchases, orders, uses or intends to purchase or order products for personal needs not directly related to entrepreneurial activity or performance of duties of a hired employee. As it follows from the definition of a consumer that the consumer can be only a natural person who is a participant in civil relations (thus, it can be both citizens of Ukraine, foreigners and stateless persons). However, the main criterion for distinguishing the consumer from other participants in civil legal relations is the goal of acquiring products aimed at satisfying personal needs not directly related to entrepreneurial activity or performance of duties of a hired employee. O. Yu. Cherniak, studying the consumer's civil legal status in the context of Ukrainian legislation adaptation to the EU legislation, notes that in the EU law a person who purchases good (services) for use but not with the purpose of commercial or professional activity is recognized as a consumer[19]. Taking into account judicial practice, a consumer is considered from the point of view of a weak party to a contract[20].

The interpretation of concept of a "consumer" as a natural person is not solely Ukrainian, but corresponds to the widespread European practice on this issue. Thus, according to Article 2 of Council Directive 93/13/EEC on 5 April, 1993 on unfair terms in consumer contracts,[21] the consumer is any natural person who, in contracts governed by this Directive, is acting for purposes outside personal professional activity, business, and profession. At the same time this EU Directive is based on consumer definition given in Rome Convention on the Law applicable to contractual

[17] Дудла І. О. Захист прав споживачів: навчальний посібник. К.: Центр учбової літератури, 2007. С. 39.

[18] Керівні принципи захисту інтересів споживачів. Резолюція 39/248 Генеральної Асамблеї ООН від 09.04.1985 р. URL: http://zakon3.rada.gov.ua/laws/show/995_903 (дата звернення: 25.04.2019).

[19] Черняк О. Ю. Цивільно-правовий статус споживача у контексті адаптації законодавства України до законодавства Європейського Союзу: автореф. дис. ... канд. юрид. наук: 12.00.03; НДІ приватного права і підприємництва НАПрН України. К., 2011. С. 7.

[20] Campbell P. The Consumer Interest: a Study in Consumer Economics. N. Y., 1976. P. 2.

[21] Директива Ради 93/13/ЄЕС від 5.04.1993 р. «Щодо несправедливих умов споживчих договорів // Міністерство юстиції України. URL: http://old.minjust.gov.ua/ 45878 (дата звернення: 26.04.2019).

obligations of 1980[22], as a person acting outside own commercial activity or profession. We should note that when comparing this definition with the definition of the Law of Ukraine "On Protection of Consumer Rights", granting a consumer status to a person does not depend on the nature of their actions performed, but in the Law the consumer must necessarily order, acquire, and use something or intend to do so. Moreover, the Directive, unlike the Law, provides for a limited number of non-consumer goals, while all others are considered to be consumer ones. Therefore, according to the Directive, much more people will be subject to consumer protection[23].

The consumer's legal status is a special legal status of a natural person, who purchases (intends to purchase), or uses products solely for personal needs, which are not directly related to entrepreneurial activity of this natural person or this person's duties of hired employee, enshrined in legislation on protection of consumer rights[24]. As O. Yu. Cherniak notes, specificity of the consumer's legal status is manifested in two peculiarities: a moment of occurrence of such status in a person and in giving the consumer additional legal opportunities in the framework of a special legal status. Taking it into account, the author determines the structure of the consumer's special civil-law status, including the following elements: a special civil legal capacity, consisting in the unity of special legal capacity and ability, as well as personal rights and responsibilities[25]. At the same time, in order for relations to be covered by the Law of Ukraine "On Protection of Consumer Rights", it is necessary to take into account the legal status of another subject of legal relations from whom a consumer purchases, orders, uses or intends to purchase or order products, that is, the executor or the seller, who, in accordance with clause 3, 18 part 1 of Article 1 of this Law are subjects of economic activity. The said Law does not cover relations where a manufacturer and a seller of goods, an executor of works and a services provider is a natural

[22] Convention on the Law Applicable to Contractual Obligations of 19 June 1980 // Treaty Series. Vol. 1605. N. Y., 1997. P. 59–156.

[23] Milovska N. Legal status of the consumer of insurance services under the law of Ukraine // Jurnalul juridic naţional: teorie şi practică. 2017. № 4 (26). P. 84.

[24] Ханик-Посполітак Р. Ю. Захист прав споживачів фінансових послуг в Україні: правовий аналіз. К.: НУ «Києво-Могилянська академія», 2011. С. 21.

[25] Черняк О. Ю. Цивільно-правовий статус споживача у контексті адаптації законодавства України до законодавства Європейського Союзу: автореф. дис. ... канд. юрид. наук: 12.00.03; НДІ приватного права і підприємництва НАПрН України. К., 2011. С. 8.

person who is not an entrepreneur, as well as cases where an acquirer of goods, a user of services is enterprises, institutions, and organizations[26].

Currently, there is no legal definition of concept of "consumer of insurance services". Professional legal literature also does not contain definitions of this concept, in contrast to works in the economic field[27]. Insufficient determinacy of legal status of the consumer of insurance services creates obstacles in the protection of their rights, which is confirmed by judicial practice of considering civil cases arising from insurance contracts [28]. It should be noted that from the time of legislation on consumer protection occurrence, it was oriented, first of all, on regulation of property relations, within which the needs of consumers in obtaining the goods themselves are satisfied. Thus, G. A. Osetynska in her dissertation research points out that the overwhelming part of provisions of consumer law institution has not received proper scientific justification, in particular concerning protection of consumer rights in the field of providing services[29].

The phrase, in particular, "a consumer of financial services" is used in the Law of Ukraine "On Financial Services and State Regulation of Markets of Financial Services"[30]. Thus, according to clause 7, Part 1 of Article 1 of this Law, the customers of financial services belong to participants of financial service market. However, there is no legal definition of "a customer of financial services" in the law. It is worth noting that in accordance with the plan of measures concerning implementation of the Concept for Protection of Consumer Rights of Non-Banking Financial Services of Ukraine[31], the National Commission on State Regulation in the Field of Markets of Financial Services (hereinafter – Natsfinposlug) was obliged to implement a range of

[26] Жайворонок Т. Є., Павловська С. В. Судова практика розгляду цивільних справ про захист прав споживачів // Вісник Верховного Суду України. 2013. № 1 (149). С. 19.

[27] Гаманкова О. О. Ринок страхових послуг України: сутність, тенденції та шляхи розвитку: автореф. дис. ... док. екон. наук: 08.00.08; ДВНЗ «Київ. нац. екон. ун-т ім. В. Гетьмана». К., 2010. 33 с.

[28] Мельник З. П., Романюк Я. М. Судова практика розгляду цивільних справ, що виникають з договорів страхування // Вісник Верховного Суду України. 2011. № 8 (132). С. 12.

[29] Осетинська Г. А. Цивільно-правовий захист прав споживачів за законодавством України: автореф. дис. ... канд. юрид. наук: 12.00.03; Київський національний ун-т ім. Тараса Шевченка. К., 2006. С. 2.

[30] Закон України «Про фінансові послуги та державне регулювання ринків фінансових послуг» від 12 липня 2001 р. // Відомості Верховної Ради України. 2002. № 1. Ст. 1.

[31] Розпорядження Кабінету Міністрів України «Про затвердження плану заходів щодо реалізації Концепції захисту прав споживачів небанківських фінансових послуг в Україні» від 20 січня 2010 р. № 135-р. // Урядовий кур'єр. 2010. № 25.

measures including settlement of the issue for determination of concept "a consumer of financial services". In the draft suggested by Natsfinposlug "On approval of the Draft Law of Ukraine "On amendments to some legal act of Ukraine for improvement of state regulation and supervision of markets of non-banking financial services" on October 30, 2018[32] it was proposed to amend Part 1 of Article 1 of the Law of Ukraine "On Financial Services and State Regulation of Market of Financial Services with new clauses 7^1 and 7^2 with the following meaning: "7^1) the consumer of financial services (consumer) – is a natural person who receives, has intentions and in accordance with the law may receive a financial service to meet needs not related to entrepreneurial, independent professional activities or performance of duties of a hired employee; 7^2) the customer – a natural person (including the consumer), a natural person-entrepreneur or legal entity which receives, has intentions and in accordance with the law may receive a financial service. In turn, the phrase "a consumer of insurance services" is used in the draft Law of Ukraine "On Insurance" on December 19, 2011[33]. This draft contains a new version of the Law of Ukraine "On Insurance" and was adopted in the first reading on May 22, 2012. In addition, Article 94 and Article 95 of this draft contain the phrase "a consumer of insurance services", but Article 1 giving determination of concepts used in the draft, does not contain such phrase.

According to G. O. Ilchenko, a consumer of insurance services is a legally capable natural person who, on the basis of a concluded contract with this person or by another person with the insurer, obtains an insurance service necessary to meet personal needs not directly related to entrepreneurial activity of that natural person or that person's performance of duties as a hired employee[34]. However, such definition is not accurate enough, since, as it follows from it, only the insured acting as a consumer of insurance services is a participant of insurance relations. In addition, an

[32] Проект розпорядження Національної комісії з державного регулювання у сфері ринків фінансових послуг «Про схвалення проекту Закону України «Про внесення змін до деяких законодавчих актів України щодо вдосконалення державного регулювання та нагляду за ринками небанківських фінансових послуг» від 30.10.2018 р. № 1913. URL: https://www.nfp.gov.ua/ua/ Proekty-rehuliatornykh-aktiv/26494.html (дата звернення: 29.04.2019).

[33] Проект Закону України «Про внесення змін до деяких законів України та виклад Закону України «Про страхування» у новій редакції від 19.12.11 р. № 9614. URL: http://zakon.rada.gov.ua/rada/show/4826-17 (дата звернення: 29.04.2019).

[34] Ільченко Г. О. Цивільно-правовий захист прав споживачів страхових послуг: дис. … канд. юрид. наук: 12.00.03. К.: НДІ приватного права і підприємництва імені академіка Ф. Г. Бурчака НАПрН України, 2016. С. 73.

insurance contract is concluded by the insurer only with the insured person, and not with another person, as indicated in the author's definition. However, property interest may be insured by such contract for the insured personally and for another person, as well as the insurance contract may be concluded both in favor of the insured person and another person.

It is worth noting that the consumer of insurance services, as it follows from the Law of Ukraine "On Protection of Consumer Rights", may not only be a natural person who acquires or orders a service for personal needs, but also a natural person who uses such service for these goals (for example, the insured person or beneficiary). Concluding an insurance contract in favor of the third person, the insured person is exactly the user (consumer) of the insurance service, provided that the insurance contract is aimed at satisfying their personal needs. Moreover, according to the letter from the Supreme Court of Ukraine of July 19, 2011, the insurance contract gives the third person the right to demand from the insurer to make an insurance payment in favor of this third person, that is, it gives the beneficiary the rights of the insured party, but does not impose on beneficiary obligations of the latter[35].

Therefore, the consumer of insurance services is a capable natural person, who concludes an insurance contract with the insurer, as well as the natural person in whose interests and in whose favor the insurance contract is concluded, and who receives the insurance service necessary for satisfaction of personal needs, not directly related to the entrepreneurial activity of this natural person or the performance of natural person's duties as a hired employee.

The process of providing an insurance service combines the unity, confrontation and dependence of interests of the parties "insurer – the insured". This can be explained by necessity for a balance between ensuring the financial stability of the insurer on the one hand and providing insurance protection to the insured, on the other.

The insurers are interested in minimization of expenses, including at the expense of reduction of insurance payment, and the insured persons are interested in obtaining insurance protection in full. It is possible to add to these features as well that in most cases the consumer of insurance

[35] Мельник З. П., Романюк Я. М. Судова практика розгляду цивільних справ, що виникають з договорів страхування // Вісник Верховного Суду України. 2011. № 8 (132). С. 21.

services does not have special knowledge in the field of providing this type of services. Therefore, as L. M. Sokil appropriately notes, it is unprofessional status of the consumer and asymmetry of the parties to the insurance contract that are those additional arguments, determining the need for an additional protection mechanism of this category of the insured[36]. And this mechanism should be based, first of all, on the right and obligations of the parties to the insurance contract.

Since the insurance contract is bilateral, each of its parties has rights and obligations. It is important that the rights of one party relate to the obligations of the other party in such a way that the relevant obligation of the insurer corresponds to the relevant right of the insured and vice versa. Depending on the sources of legal regulation, the rights of consumers of insurance services can be classified into: 1) the rights enshrined in laws (the Civil Code of Ukraine, the Law of Ukraine "On Insurance", etc.), 2) the rights enshrined in by-laws (Decrees and Orders of the Cabinet of Ministers Ukraine, the Decree of the National Commission on State Regulation in the Field of Markets of Financial Services); 3) rights enshrined in local acts (Rules of Insurance); 4) rights enshrined in the insurance contract.

The general rights and obligations of the parties to the insurance contract are provided for by the Civil Code of Ukraine (Articles 988, 989) and the Law of Ukraine "On Insurance" (Articles 20, 21). Thus, the ensured has the right to: choose an insurer for insurance contract conclusion; to conclude an insurance contract with the insurer on third parties' insurance (insured persons) only with their consent, except for the cases stipulated by current legislation; when concluding an insurance contract, appoint a natural person or legal entity (beneficiaries) to receive an insurance payment, unless otherwise provided for in the insurance contract; before insured event occurrence, replace the beneficiary appointed under the insurance contract, except for the liability insurance contract, by another person, informing the insurer about it in writing. It should be taken into account that the respective right of the insured to replace the beneficiary with another person can not be realized after the beneficiary has fulfilled any of obligations under the insurance contract or has submitted to the insurer a claim for the insurance payment; increase the amount of insurance sum with the subsequent recalculation of amount

[36] Сокіл Л. М. Про необхідність уточнення поняття «споживач страхових послуг» // Фінанси, облік і аудит. 2012. № 19. С. 183.

of the insurance payment during validity term of the insurance contract; at insured event occurrence, receive an insurance payment in a manner and in terms established by rules and insurance contract; early terminate the effect of the insurance contract under conditions stipulated by insurance rules.

In addition, analyzing obligations of the insurer, provided in Article 20 of the Law of Ukraine "On Insurance", it is possible to distinguish the following rights of the insured: the right of the insured to be familiarized with conditions and rules of insurance; the right to timely payment of insurance payments or insurance indemnity; the right to receive a penalty (fine) in case of untimely insurance payments; the right for indemnification of expenses incurred by the insured in case of insured event occurrence in respect of prevention or reduction of losses, if it is provided by the terms and conditions of the contract, the right of the insured in case of taking measures that reduced insurance risk or increased property value, to renew the insurance contract, the right to non-disclosure of information of the insured about the insured and their property status, except in cases specified by law, etc.

Taking into account the dynamics of insurance relations, the rights and obligations of the parties to the insurance contract can be divided into four groups: 1) rights and obligations arising at the stage of insurance contract conclusion; 2) rights and obligations arising during the insurance contract validity; 3) rights and obligations arising after insured event occurrence; and 4) rights and obligations arising from the improper performance of the insurance contract.

Characterizing the rights of the insured, including the rights of consumer of insurance services, it should be noted that, in particular, at the stage of concluding an insurance contract, the insured has the right to necessary, accessible, reliable and timely information about the insurance service, providing possibility of its informed and competent choice. Thus, Western authors, analyzing judicial practice, indicate that using the concept of "consumer", the courts should determine the degree of consumer's information awareness[37]. The exercise of the right of the insured to information about an insurance service is a precondition for existence and possible exercise of other rights of the insured. Provision of such information, as a rule, must precede the conclusion of an insurance

[37] Incardona R., Poncibo C. The Average Consumer, the Unfair Commercial Practices Directive, and the Cognitive Revolution // Journal of Consumer Policy. 2007. Vol. 30. P. 30.

contract, so, information must be provided before the service purchase[38]. This right gives the opportunity to identify such subject as a "potential consumer" who has an interest in purchasing an insurance service but is not obliged to purchase it[39]. If there is such interest, a consumer has the right to receive information about the insurance service. Thus, we join the point of view of scientists who prove the pre-contractual legal nature of consumer rights to information on products (in this case, an insurance service)[40]. In addition, the right of the insured to information does not vanish after insurance contract conclusion; it exists during all the validity term of the contract.

During the insurance contract validity, the ensured, including the consumer of insurance services, has the right to: proper quality of service; the right not to disclose information about the customer and customer's property status, except in cases established by law; the right to renew the contract in case of reduction of the insurance risk or increase of the property value; the right of the insured to initiate the application amendments and additions to this agreement; the right to receive a duplicate of the insurance contract in case of its loss; the right to terminate the contract ahead of time in accordance with the conditions specified by the contract and Insurance rules; the right to appoint beneficiaries to receive insurance payments or to change them before the occurrence of an insured event, etc.

One of the rights of the insured, which can be exercised at this stage of contractual relations, in particular property insurance, is the right to declare to the insurer about abandonment of insured rights to all insured property (abandon) and to receive a full insurance sum in case of loss or death of property. Such right of the insured is stipulated in Article 271 of the Merchant Shipping Code of Ukraine (hereinafter referred to as the MSC of Ukraine), according to which the insured can claim to the insurer to abandon own rights to all insured property (abandon) and to receive the full insurance sum in the following cases: loss of a missing ship; economic inexpediency of rebuilding or repairing the insured vessel;

[38] Ільченко Г. О. Цивільно-правовий захист прав споживачів страхових послуг: дис. … канд. юрид. наук: 12.00.03. К.: НДІ приватного права і підприємництва імені академіка Ф. Г. Бурчака НАПрН України, 2016. С. 78.

[39] Hondius E. The Notion of Consumer: European Union versus Member States // Sydney Law Review. 2006. Vol. 28. No. 1. P. 94.

[40] Черняк О. Ю. Цивільно-правовий статус споживача у контексті адаптації законодавства України до законодавства Європейського Союзу: автореф. дис. ... канд. юрид. наук: 12.00.03; НДІ приватного права і підприємництва НАПрН України. К., 2011. С. 9.

economic inexpediency of elimination of damage or delivery of insured goods to their destination; seizure of a ship or cargo insured against such danger if the seizure lasts more than two months. If, upon receipt of an indemnity from the insurer, it appears that the ship has not lost or the seized vessel or cargo is released, the insurer may require that the insured, having left the property, has returned the insurance indemnity, with the exception of partial indemnity if the insured has suffered from it. The application to abandon must be made to the insurer within six months from expiration of terms (occurrence of circumstances), loss of property[41]. With expiration of six-month period, the insured loses the right to abandon, but may claim damages on general grounds (Article 272 of the MSC of Ukraine)

After insured event occurrence, the insured has the right to: timely payment of insurance payment or insurance indemnity; the right to indemnification of expenses incurred by the insured at the insured event occurrence in order to prevent or reduce losses, if it is provided by terms and conditions of the contract[42]. In case of improper performance of the insurance contract, the insured as a party to the insurance contract has a right to judicial protection of their violated, unrecognized or disputed rights or interests, the right to obtain a penalty (fine) in case of untimely insurance payments, etc.

In addition, it should be noted that in legal doctrine there are various grounds for the classification of consumer rights, including the rights of consumers of insurance services. Thus, the rights of consumers listed in Article 3 of the Law of Ukraine "On Protection of Consumer Rights" I. O. Dudla classifies, depending on the area of their implementation, on general organizational rights, implementation of which is based on interaction with state authorities (state protection of consumer rights, consumer associations in public organizations, appeal to court and other authorized bodies), and consumer rights related to relations between them and subjects of entrepreneurial activity selling goods (work, services) (right to the proper quality of goods (works, services) and services; the right to safety of goods (works, services), the right to necessary, available, reliable and timely information on products; indemnification of damages caused by goods (works, services) of improper quality as well as property

[41] 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.

[42] 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. 324.

and moral damage caused by dangerous products[43]. In our opinion, the rights of insurance service customers depending on regulatory action of civil law acts which establish and regulate relevant relations, can be divided into: universal (general), existing of which is established by the Law of Ukraine "On Protection of Consumer Rights", and special: the right of insurance service consumers provided by insurance legislation and an insurance contract.

At the same time, subjective right, as it is noted in legal literature, can not be successfully implemented outside the context of a legal obligation, since it loses essentially its content and meaning in other case. It is subjective rights and obligations that are mutually determining (correlative), linking or placing subjects in legal dependence on each other and thus form legal relations[44]. Thus, as it follows from Article 989 of the Civil Code of Ukraine and Article 21 of the Law of Ukraine "On Insurance", obligations of the insured under the insurance contract are: timely contribution of insurance payments; at conclusion of the insurance contract providing the insurer with information on all the known circumstances, which are essential for evaluating the insurance risk, and further informing the insurer of any change in the insurance risk; insurer's notification on other valid insurance contracts concerning the object of insurance. According to Article 989 of the Civil Code of Ukraine, if the insured has not informed the insurer that the object is already insured, a new contract is invalid; taking measures to prevent and reduce losses incurred as a result of an insured event; notification of the insurer about the insured event occurrence within the period stipulated by insurance conditions. The terms and conditions of the insurance contract can also include other obligations of the insured.

The main obligation of the insured person is to pay for an insurance service (insurance payment, premium) in the amount established by the contract (Part 1 of Article 989 of the Civil Code of Ukraine). In turn, the insurer has the right to reduce the amount of insurance payments, encouraging the insured to take measures aimed at preventing the insured event occurrence, as well as increase the amount of insurance payments to the insured persons who caused the insured events. A lawmaker associates the entry into force of the insurance contract and the beginning of the

[43] Дудла І. О. Захист прав споживачів: навчальний посібник. К.: Центр учбової літератури, 2007. С. 23–25.

[44] Надьон В. В. Суб'єктивний обов'язок як елемент змісту цивільних правовідносин: монографія. Харків: Право, 2017. С. 163.

insurance protection with making the first insurance payment (Article 983 of the Civil Code of Ukraine). Protection is provided through an insurance fund, formed from insurance premiums paid by the insured.

In accordance with Part 2 of Article 997 of the Civil Code of Ukraine, if the insured has delayed the insurance payment and did not pay it within 10 working days after the insurer had filed a written request for the insurance payment, the insurer can refuse from the insurance contract, unless otherwise specified in the contract. Article 39 of the Law of the Federal Republic of Germany on the insurance contract[45] also explicitly states the necessity for the insurer before refusing of the contract in connection with the delay in paying the premium to remind the insured of the necessity of payment, and if the insured ignore this reminder it is quite rightly to give the insurer the right to refuse from the contract. A similar norm is contained in Article 20 of the Swiss Act on Insurance Contract[46]. The norm of Article 1901 of the Civil Code of Italy[47] contains the provision according to which the insurance contract remains valid for 15 days after the delay in payment of the next contribution.

Article 997 of the Civil Code of Ukraine provides for possibility of returning the insurance payments to the insured previously paid by them. Thus, the insurance payments paid, are fully returned to the insured by the insurer, if the refusal from the contract by the insured is caused by violation of terms and conditions of the contract by the insurer, as well as if the insurer has refused from the insurance contract (except for the life insurance contract). In turn, insurance payments for the period remaining before the expiration of the insurance contract are returned to the insured by the insurer if the insured has refused from the insurance contract (except for the life insurance contract), and if the insurer's refusal from the contract is caused by non-performance of the conditions of the insurance contract by the insured. In addition, the possibility of returning paid insurance payments to the insured, in particular, under the contract of universal life insurance within the limits of insurance reserve, formed before the termination of the insurance contract, is stipulated in Article 28 of the Law of Ukraine "On Insurance". This amount is called a cash

[45] Закон ФРГ о страховом договоре от 30 мая 1908 г. // Страховое ревю. Апрель-май 1999 г., июнь–июль 1999 г.

[46] Швейцарский союзный закон о страховом договоре от 2 апреля 1908 г. / Пер. под ред. и с предисл. В. М. Нечаева. СПб., 1999.

[47] Il Codice Civile Italiano: перев. с итал. И. Спринд-Ниманд. М., 2005. URL: http://www.sprind.ru/index.php?option=com_content&view=article&id=50&Itemid=55&lang=ru (Last accessed: 23.11.2018)

surrender value. So, in case of early termination of the life insurance contract, the insurer pays a cash surrender value to the insured which is a property right of the insured under the life insurance contract. If the insurer's demand is caused by non-performance of conditions of the insurance contract by the insured, the cash surrender value is returned to the insured. The cash surrender value is the amount paid by the insurer in case of early termination of the life insurance contract and calculated mathematically on the day of termination of the contract depending on the period during which the life insurance contract was in force, according to the methodology, which undergoes examination in the Authorized body, is executed by actuary and is an integral part of life insurance rules. The Authorized body can establish requirements for the method of calculating the cash surrender value.

Insurance relations are based on a generally accepted principle of the highest trust of the parties, which involves providing complete information by parties (mostly the insured) about the object of insurance, including confidential one. Thus, at conclusion of the insurance contract, the insured is obliged to provide the insurer with information about all known circumstances known, which are essential for evaluating the insurance risk, and to keep the insurer informed of any changes in the insurance risk. Essential circumstances are considered such circumstances the knowledge about which would lead to a refusal to conclude a contract or significantly changed the conditions of payment for insurance services under the relevant contract. The composition of essential circumstances may vary in each specific case, depending on the features of an insurance object and nature of an event, for occurrence of which the insurance is carried out.

Taking into account the fact that a large number of circumstances can affect the amount and nature of risk, the insured as an unprofessional participant in insurance relations does not always know what to pay attention to, and what circumstances can be ignored. In turn, the insurer is a professional participant in insurance relations, whose risks are usually typified, and therefore the insurer, to a much greater extent than the insured, knows which circumstances are essential for evaluating the insurance risk. Therefore, negative consequences for the insured can take place only in case of deliberate failure to notify the insurer of circumstances known to the insured.

In general, circumstances that are substantially significant may include, for example, hidden deficiencies of the insured property,

availability of security and signaling system in the premises where the property is located, or in car, other conditions for storage of property, health conditions of the insured natural person. Significant changes may include changes of the property owner (holder), nature of the property use, the removal or breakdown of signaling system, termination of protection of the insured object. The insured must notify the insurer of the circumstances which: 1) provide an opportunity to assume that the risk from which insurance is being made creates a greater threat to the insurance object than usually. For example, in case of insurance of a building from fire, such circumstance is wear of wiring in the premise; 2) give an opportunity to assume that the insured person will not follow the usual precautionary measures. For example, in property insurance, overestimated evaluation of the real property value can be this circumstance, and its owner, in addition to the interest in preservation of property, has actually speculative interest; 3) indicate that at the insured event occurrence, more damage will be done than it is usually done in such cases. Thus, in case of medical insurance, such circumstance is presence of allergic reactions in the history of the insured person; 4) indicate the so-called psychological risk. For example, in case of insurance in case of theft, such circumstances include the criminal past of the insured, in case of property insurance – the fact that earlier this property has already been insured, but the previous insurer refused to extend the contract[48].

Assigning of such obligation to the insured person gives some authors the ground to consider an insurance contract as a type of a fiduciary contract, namely, the contract concluded on special trust (fiduciary trust)[49]. However, a classical insurance contract is not a fiduciary transaction, since the insurer is not a possessor or an owner of the insured property. In turn, improper performance of such obligation can be a ground for refusal in making an insurance payment by the insurer at the insured event occurrence.

The insured is obliged to inform the insurer of other insurance contracts concluded on the object to be insured at the conclusion of the insurance contract (Part 3 of Article 989 of the Civil Code of Ukraine). Insurance can not be aimed at enriching the insured. Therefore, if an object is insured by several insurers, then the insurance indemnity paid by

[48] Фогельсон Ю. Б. Страховое право: теоретические основы и практика применения: монография. М.: Норма: ИНФРА М, 2012. С. 302.

[49] Гражданское право: учебник. В 4-х т. Т. 1 / Под ред. Е. А. Суханова. М., 2008. С. 301.

all insurers can not exceed the amount of the damage caused. If the insured has not informed the insurer that the object of insurance is already insured, a new insurance contract is void (Part 3 of Article 989 of the Civil Code of Ukraine). In turn, for the conclusion of a reinsurance contract, the insurer is not obliged to notify the insured.

The insured is obliged to take measures to prevent damage caused by the insured event occurrence and to reduce them (Part 4 of Article 989 of the Civil Code of Ukraine). The indicated norm determines the time when obligation of the insured to take such measures appears – this is the moment of the insured event occurrence, namely, the moment when danger, from which the insurance is carried out, begins to cause damage. However, the insured can take measures reducing the likelihood of danger occurrence even before its occurrence. In this regard, the relevant measures are, in fact, not measures for reduction, but measures for prevention of losses. Thus, it is possible to distinguish the following measures taken by the insured in order to prevent or reduce losses: 1) preventive measures taken before occurrence of danger; 2) measures taken after occurrence of danger, but before the beginning of causing damage; 3) measures taken after the damage has begun to be inflicted.

It is worth noting that appropriate measures can be both actions and inaction (in particular, termination of operation of a vehicle damaged as a result of an accident, etc.). Such measures of the insured must meet the requirements of reasonableness (Article 3 of the Civil Code of Ukraine). Reasonableness in this case should be considered as actions taking into account those expenses necessary for their carrying out, in comparison with the amount of reduced losses. Reasonableness as a feature of measures to be taken by the party to reduce damage is also provided by Article III. – 3: 705 Draft Common Frame of Reference[50] and Article 7.4.8. of the UNIDROIT[51] principles, according to which reasonable measures may include taking certain actions, and keeping from actions that are unjustified under these circumstances. If the party, by

[50] Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR). Prepared by the Study Group on European Civil Code and the Research Group on EC Private Law (Acquis Group). Based in part on a revised version of the Principles of European Contract Law, 2009. URL: https://www.law.kuleuven.be/personal/mstorme/2009_02_DCFR_OutlineEdition.pdf (Last accessed: 08.01.2019).

[51] Принципи международных коммерческих договоров УНИДРУА / Пер. с англ. А. С. Комарова. М.: Междунар. отношения, 2003. 288 с.

taking reasonable measures to reduce the losses, actually increases them, all costs are subject to indemnification[52].

Along with obligation of the insured to take measures to prevent losses caused by the insured event occurrence, and to reduce them, the law provides for obligation of the insurer to cover expenses incurred by the insured in case of an insured event in order to prevent or reduce losses, if it is stipulated by the contract (Part 4 of Article 988 of the Civil Code of Ukraine), as well as upon the request of the insured, in case of an insurer's measures for reducing insurance risk, to renew an insurance contract with the insured (Part 5 of Article 988 of the Civil Code of Ukraine, Article 20 of the Law of Ukraine "On Insurance"). At the same time, the insured demanding indemnification of losses incurred at the insured event occurrence with the purpose to prevent and reduce losses, has the necessity to prove the following circumstances: the purpose of the expenses incurred (they should be aimed at reducing the losses to be indemnified by the insurer), the necessity of the expenses incurred (some of costs might not be necessary to be made, but they have been made additionally); inevitability of causing damage.

The insured is obliged to inform the insurer about the insured event occurrence within the term established by the contract (Part 5 of Article 989 of the Civil Code of Ukraine). The claim of the insured for payment of insurance indemnity must be made in due time. Usually, under a voluntary insurance contract, the insured must notify the insurer in writing of the insured event occurrence within the term specified in the contract. Thus, in case of the insured event occurrence, the insured (a driver of the vehicle which caused the road accident) is obliged to inform the insurer about the insured event occurrence within three working days, give a written explanation about the circumstances of the accident and, if necessary, provide a vehicle for inspection and examination. In the absence of the insured, any adult member of family of the insured must apply with such statement. The obligation to notify the insured event occurrence may also be born by the beneficiary who must report about this if intends to take advantage of the right to receive an insurance indemnity.

In accordance with Part 1 of Article 13 of the Law of Ukraine "On peculiarities of insurance of agricultural products with state support"[53] in

[52] Діковська І. А. Співпраця – обов'язок сторін міжнародного приватного договору // Альманах міжнародного права. 2014. Вип. 5. С. 123.

[53] Закон України «Про особливості страхування сільськогосподарської продукції з державною підтримкою» від 9 лютого 2012 р. № 4391-VI // Відомості Верховної Ради України. 2012. № 41. Ст. 491.

the insured event occurrence, the insured must not later than 72 hours from the day of its occurrence notify the insurer in writing about it. In turn, in case of death or forced slaughter (destruction), traumatic damage or the disease of insured agricultural animals, poultry, rabbits, fur animals, bee colonies, aquatic bio-resources and livestock products, the insured is obliged to inform the insurer within 48 hours from the moment of detecting this event about it in writing and register the fact of their death, forced slaughter (destruction), traumatic injury or disease in the central executive body, which ensures the implementation of state veterinary policy in the field of veterinary medicine (central executive body, implementing the state policy in the field of fisheries). If the insured has not informed about the insured event occurrence, the insurer has the right to refuse to make an insurance payment[54].

Current law does not provide for a complete list of obligations of the insured. It can be extended by other civil law acts[55], as well as by an insurance contract concluded, if it is necessary for proper implementation of civil law relations.

Thus, the parties to the insurance contract – the insurer and the insured are compulsory participants of contractual insurance relations, having sufficient scope of civil legal capacity to exercise their rights and obligations under the insurance contract. At the same time, an insurance contract as well as any other civil law contract, has to take into account both counterparties: the insurer and the insured. Within any insurance contract the interest of each party can be satisfied only by satisfaction of interest of other party, and this, in turn, produces common interest to conclusion of the contract and its proper fulfillment.

Information about the author:
Milovska N. V.
Candidate of Juridical Sciences,
Assistant Professor at the Department of Special Legal Disciplines
of the V. I. Vernadsky Taurida National University

[54] 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. 296.

[55] Шихов А. К. Страховое право: уч. пособие. 3-е изд., стер. М.: ЗАО Юстицин-форм, 2004. С. 109; 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. 564.

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CORRUPTION AND ORGANIZED CRIME IN UKRAINE

Miniailo N. Ye.

INTRODUCTION

According to the Article 1 of the Constitution of Ukraine our country is a sovereign and independent, democratic, social and legal state. These provisions are the basis for the development of not only legislation but the whole state of all spheres of its life. At the same timy in times of independence development and formation of our country is accompanied by numerous obstacles. As a result, today Ukraine faced a situation in which the main proclaimed postulates and principles of its formation and development remained on paper. And the reality requires immediate intervention and fundamental adjustments in order to actually achieve the level of a European developed and rule-based state.

The legal state is a form of government organization in which the rule in all spheres of life belongs to a legal law. In a legal state both state bodies and citizens are equally responsible before the law. It implements all human rights, the division of power into the legislative, executive, judicial. That is, it is such an organization of society in which the law and legal order take precedence over the state and other institutions of political and social power and not vice versa. And the basic rights of the person and his social security constitute the content of freedom, based on the laws that are subject to change in a lawful way.

In accordance with the Concept of reforming the criminal justice system of Ukraine, approved by the Decree of the President of Ukraine of April 8, 2008, No. 311/2008, at the current stage of development of Ukraine under radical changes in socio-political and other conditions prerequisites for reforming the system of criminal justice in the direction of further democratization, humanization, strengthening the protection of human rights and freedoms in accordance with the requirements of international legal acts and obligations of our state to the European and world community are formed.

In particular, this concerns the provision of the rights of participants in criminal justice, the expansion of the parties' adversaries, the rights of

the victim, the elimination of the indictment in the activity of the court, the expansion of judicial control over the restriction of constitutional rights and freedoms at the pre-trial stage in criminal cases and appeals to the court decisions of the inquiry authority, the investigator and the prosecutor.

The problem of corruption remains one of the important and rather acute problems of our state today. In today's world there is no state that does not feel the influence of corruption. Over time only its volumes and expressions determined by the attitude of the state and society to it have changed. In Ukraine corruption is firmly established not only in the field of economics, politics, law enforcement but also negatively affects the social sphere, public consciousness, undermines the international image of the state, and thus hinders the consolidation of democratic foundations of society, promotes the development of crime and destroys the spiritual and moral values of society. This, undoubtedly, convincingly testifies to the relevance of scientific research, the subject of study of which is the problem of corruption.

Corruption in Ukraine, its scale and the extremely high level of perception by the population as an integral part of our state is a threat to Ukraine's formation as a legal framework. Having spread in all spheres of activity and functioning of the state, it has moved into the private sector as the established way of achieving the certain goals.

Effective counteraction to corruption is possible under the condition of the existence and functioning of an appropriate system of ensuring this activity, which includes a set of coordinated and interrelated measures of personnel, information-analytical, scientific-methodical, educational, material and technical and other character aimed at the proper implementation of strategic and tactical tasks in the field of combating corruption.

Corruption directly affects the development of Ukraine as a legal framework. Disregard for the law, manipulation of laws, distributed among law enforcement and judicial authorities, affects the attitude to the right of individual citizens, entails disbelief towards it and power in general.

1. Corruption as a threat to the rule of law

The idea of a law-governed state is aimed at limiting the power of the state by law; to establish the rule of law, not people; on ensuring human security in its interactions with the state. Understanding the need for changes in the situation with ensuring human rights and freedoms in Ukraine and taking into account the European practice on these issues, our state is trying to reform its structures and legislation.

The existing system of criminal justice in Ukraine does not fully correspond to the new social relations developed in Ukraine and does not ensure the proper state of law and order, effective protection of individuals, society and state from dangerous encroachments on social values, rights and legitimate interests.

The system of criminal justice is somewhat cumbersome, internally controversial, not always scientifically sound and excessively complicated. The activities of its subjects are characterized by duplication of powers, the lack of a clear definition and delineation of their competence, giving priority to tasks that are in fact secondary, the application of unjustifiably complicated formal procedures. The criminal justice bodies have imperfect functional capabilities, which prevents them from observing the rule of law in their activities.

The system of organs traditionally called „law enforcement", created as a mechanism for persecution and repression, has not been transformed into an institution for the protection and restoration of violated rights of persons. No effective measures were taken to reduce the level of corruption in this system.

Corruption in Ukraine has features that distinguish it from corruption in developed countries. Without revealing these features it is impossible to develop adequate measures to counteract it. Corruption in Ukraine today has the feature of the corruption of crisis type. This type of corruption is: a) generated by the crisis of modern Ukrainian society (and not only by the imperfection of criminal justice); b) able to deepen the crisis of Ukrainian society, having the ability to overthrow any political, economic, legal and moral reforms.

For today, corruption is a social phenomenon and an offense that has long roots. It arises as a result of the system of objective and subjective reasons and conditions. According to the results of sociological research in the field of prevention and counteraction to corruption, the main

reasons and conditions for the emergence and spread of corruption in Ukraine are the imperfection of administrative services; creating excessive burdens for recipients of administrative services; insufficient level of integrity of persons authorized to perform state functions, inadequate effectiveness of authorized structures in terms of exposing and prosecuting perpetrators of corruption offenses, which has become a certain incentive for impunity.

The shadow economy and prices for goods and services are rising, in which the sellers pose unofficial payments, social inequality is established, and access to basic social services (free education, medicine, etc.) is reduced; leveling out the importance of education and professional achievements. In the end, the support of society is lost because of distrust of the population with corrupt officials. We have numerous plans, concepts and other legal acts against corruption, but to overcome this shameful phenomenon, there is a lack of basic – preventive work.

Corruption, if you can say so, has already become a way of thinking in our society. It rooted in all spheres of public life. In the public consciousness a system of corruption relations has been formed. It is necessary to change the style of thinking and the way of action. An important role in counteracting to corruption is to be provided by the media, to help them in a broad coverage of measures to combat this phenomenon, so that every shameful event becomes known to the general public.

It is necessary to form public support in preventing and counteracting this phenomenon, to organize educational work, in particular, to ensure that each educational institution conducts a course on the study of anti-corruption legislation, scientific and methodological and scientific-practical conferences, seminars and meetings with representatives of law enforcement structures.

Current preventive work does not achieve the goal. On the prevention of corruption should be a set of measures – preventive, controlling, if necessary, operatively-wanted, investigators, proved in a legal manner to court decisions.

Among the search for directions and methods of combating crime and corruption, in particular, one should pay attention to strengthening the principles of legality, equality of all before the law and the rule of law in Ukraine. As long as there is no respect for the right in our country, all

attempts to overcome corruption will be selective and mostly declarative. Establishing the foundations of a law-governed state requires a complex of measures that in their interconnection will bring positive results:

– abolition of immunities in respect of the prosecution of those categories of persons who own them;

– elimination of the selectivity of prosecution. The prosecution must be inevitable, but only if there are legal grounds;

– law enforcement bodies of the state should be truly "law" „guarded", not repressive and punitive. In conducting proceedings in a case, one should not forget about the need to establish the truth in it, and therefore not only the facts proving the guilty person, and possibly its innocence;

– law enforcement agencies should not „compete" with each other, but cooperate in achieving the goals of their activities for the benefit of the entire state;

– selection of personnel for law enforcement and judicial authorities should be based on their professionalism, experience and qualifications;

– the court must become truly adversarial, where each party has equal opportunities in proving its righteousness with strict observance of laws in the most reasonable terms;

– at the state level, ideological propaganda of respect for the law and strict observance of its norms by all persons without exception should be carried out, with confirmation by this concrete actions of the authorities, since the education of the legal culture will require a long time.

Of course, the listed measures are not exhaustive. In addition, one should not forget that crime and corruption in particular are social and economic reasons, therefore, the introduction of respect for the right should go hand in hand with real economic transformations in the state and society, aimed at increasing social welfare of the population. and its security. Without the development of the economy, production and the growth of incomes of the general population, corruption will remain the main source of enrichment of citizens.

Ukraine has always been very active in cooperating with other states in the fight against corruption – an antisocial phenomenon that knows no boundaries and is inherent in the vast majority of countries in the world. The gradual accession of our state to international anti-corruption treaties became a political and legal response to the situation in the state.

Nowadays Ukraine has acceded to three important international treaties which in its integrated form contain the world-wide practice of anti-corruption standards aimed at minimizing the socially negative consequences of corruption. In particular, it refers to the United Nations Convention against Corruption of 31.10.2003 (came into force on 01.01.2010 for Ukraine); Criminal Law of the Council of Europe on Combating Corruption of 27.01.1999 (came into force on 01.03.2010); Civic Convention of the Council of Europe on Combating Corruption of 04.11.1999 (came into force on 01.01.2006). Moreover, with the ratification of the latest, Ukraine has recognized itself as being under the control of the Group of States against corruption. Part of the fight against corruption is dedicated to the UN Convention against Transnational Organized Crime of 15.11.2000 (came into force for Ukraine on May 21, 2004), which considers corruption as the basis for the emergence and spread of such crime.

Participation of Ukraine in anti-corruption international treaties is aimed, first of all, at the formation of state-of-the-art ideas of corruption that are essential for the development of a modern anti-corruption legal policy, without which it is impossible to reform the national anti-corruption legislation. In this connection, the need to bring the concepts (syllables) of the crimes provided for in the Criminal Code of Ukraine into conformity with the acts specified in the conventions and to make recommendations on the improvement of the regulatory framework in accordance with international standards remains in urgent need.

Thus, under the influence of the aforementioned international legal acts, the Law of Ukraine "On the Principles of Prevention and Counteraction of Corruption" in 2009, for the first time, provided a legal definition of "corruption": corruption is the use by a person of his / her authority and related capabilities for obtaining unlawful gain or acceptance of the promise / offer of such benefit to yourself or others or, accordingly, promise / offer or unlawful gain to such person or on his request to other natural or legal persons with a view to inclining this obu to unlawful use of authority given to it and related opportunities.

In addition, the anti-corruption world standards (in particular, the 1999 Criminal Law Convention on the Elimination of Corruption (Articles 7, 8) and the 2003 United Nations Convention against Corruption (Article 12)) require states to recognize criminal corruption in

the private sphere. It is a deliberate provision of promises during the conduct of business, the offering or giving, directly or indirectly, of any unjustified advantage to any person who holds or works in private enterprises in any capacity, for them personally or for others persons in order to encourage them to perform or fail to fulfill their powers in violation of their duties.

Consequently, the provisions of the Criminal Code of Ukraine, which excluded the responsibility for the commission of corruption crimes in the private sphere, were revised. In particular, at one time, the Law „On Amendments to Certain Legislative Acts of Ukraine on Responsibility for Corruption Offenses" supplements the Criminal Code of Ukraine with a new section on corruption crimes in the private sector (Section VII-A „Offenses in the Field of Service in Private Law Entities and professional activities related to the provision of public services"). The legislator has identified the composition of such corruption offenses in a separate chapter, since responsibility for corruption in the public sector should be more rigorous than corruption in the private sector. This approach is also used in the criminal law of the United Kingdom, Iceland, Latvia, Luxembourg, the Netherlands, Poland, the Russian Federation, Slovenia, the USA, Finland, France.

Under the influence of world anticorruption standards, the legislation of Ukraine expanded the circle of subjects, which will be subject to liability for corruption offenses. In particular, it refers to such categories as officials of a foreign state or an international organization and persons who do not have the status of a civil servant, but perform public functions delegated by the state (auditor, notary, expert, lawyer, arbitrator, etc.). In turn, according to the UN Convention against Corruption, „official of an international organization" is an employee of an international organization or any person authorized to act on its behalf. This approach is in line with the provisions of the UN Convention against Corruption (Article 2), the Council of Europe Criminal Law Convention on Combating Corruption (Article 1) and the Additional Protocol to it (Articles 2, 3).

On May 11, 2000, the Committee of Ministers of the Council of Europe adopted Recommendation No. R (2000) 10 recommending that the governments of the member states adopt national codes of conduct for officials based on the Model Code of Conduct for Public Officials and Local Self-Government Agencies annexed to this Recommendation. The

Model Code provides for a number of rules to prevent the conflict of interests of officials, including the receipt of gifts.

In particular, Art. 18 of the Model Code states that an official can not demand or accept gifts, signs of attention, manifestations of hospitality or other benefits for himself or his family, close relatives and friends, or persons or organizations with which he has business or political relations that may emerge or appear to affect impartiality in the performance of official duties, or which are remunerated or appear to be remunerated in connection with his duties. This does not apply to generally accepted hospitality or small gifts.

It is important to note that the Committee of Ministers of the Council of Europe has instructed the Group of States against Corruption (GRECO) to monitor the implementation of this Recommendation. Therefore, Ukraine has to adhere to these standards, since it has entered into GRECO, and has assumed the corresponding obligations. At the same time it should be emphasized that the necessity of introducing similar norms exists not only because Ukraine has assumed respective international obligations. World experience suggests that setting limits on public service providers in obtaining gifts related to public duties is one way to prevent a possible conflict of interest.

Without these provisions none of the domestic anti-corruption systems will be effective. In addition, it is important to ensure public confidence in the public administration, confidence in its impartiality and justice. Certainly, such trust can not exist if citizens see that an official receives remuneration from one or another person for committing or refraining from committing certain actions in their favor. Taking into account the above, Art. 5 of the Law of Ukraine "On the Principles of Prevention and Counteraction of Corruption" limits the receipt of gifts for civil servants.

In addition, the Group of States Parties to the Council of Europe Against Corruption (GRECO), after investigating the anti-corruption legislation of Ukraine, recommended revising the system of administrative liability for corruption offenses in order to clearly establish that cases of corruption should be treated as criminal offenses or, as a last resort, clearly demarcate requirements before applying these two distinct procedures. Taking this into account the Code of Ukraine on Administrative Offenses was also changed. In particular, Chapter 15-B

outlines the scope of corruption offenses in accordance with the Law of Ukraine „On the Principles of Prevention and Counteraction of Corruption" (in particular, obtaining unlawful benefits, bribery, unlawful assistance to individuals and legal entities, violation of requirements for the declaration of personal interests, etc.) and a clear distinction has been made between criminal and administrative responsibility for corruption.

Therefore, Ukraine's participation in international cooperation in the fight against corruption requires the full implementation of the norms of international anti-corruption conventions. The inconsistency of Ukrainian anti-corruption legislation with the ideology and core norms of anticorruption conventions can have negative consequences, in particular, because of the inability of a state's full-fledged presence in international cooperation in the fight against corruption, and hence the deterioration of the effectiveness of the fight against corruption at the national level.

In general, international anti-corruption standards have significantly influenced the development of Ukraine's anti-corruption legislation. This is especially true of those fundamental principles laid down by the Group of States against Corruption, which monitor the compliance of our state with the commitments it has undertaken to ratify the Council of Europe Convention on the fight against corruption.

The term „corruption" is no longer new and is used not only by scientists but also by the general public; it can be heard in the application not only in relation to persons who are in the public service, but also to entrepreneurs, technologists, scientists and others. And there is no doubt that corruption is closely linked to organized forms of crime, and sometimes it is an integral part of them. Thanks to corruption the organized crime of a certain country gets opportunities to spread its activities in the territory of other states, „captures" its territory. It is almost the most important determinant which predetermines the proliferation and security of the functioning of transnational criminal organizations.

Such a social phenomenon as corruption is closely linked to the shadow economy and often lies in the historical, cultural and political development of the state and society, its mentality. It exists in any state, has the ability to penetrate all power structures, thereby destroying their nature and preventing the implementation of various economic, social and

other programs of government, destroying the very system of government in the country and opening the path to crime.

2. Corruption and organized crime

The Concept of Combating Corruption for 1998-2005, approved by the Decree of the President of Ukraine in 1998, states that „corruption feeds organized crime primarily in the economy, becomes an indispensable condition for its existence".

Along with other conditions, corruption allows organized crime to be protected from the influence of the state and its law enforcement agencies. Organized crime groups use a variety of corrupt acts that give benefits in obtaining real estate, contracting, avoiding punishment, etc.

The United Nations Convention against Transnational Organized Crime of 15 November 2000, states that corruption means a promise, offer or provision to a public official, personally or through intermediaries, of any unjustified advantage for the official himself or another person or entity in order for that official the person committed any act or omission in the performance of his official duties.

In addition, this extortion or acceptance by a public official, personally or through intermediaries, of any unjustified advantage for the official himself or another person or entity in order for that officer to commit any act or omission in the performance of his duties tries

But this definition is not universal, since it does not cover all possible acts that can be defined as corrupt.

The search for organized crime of new fields of activity and forms of influence on society leads to the search for organized criminal formations and new opportunities and ways of involving representatives of the authorities in the use of their official position for the benefit of both parties. In different countries corruption is manifested differently.

Developing countries are more likely to experience corruption that covers the entire system of government than developed countries. Often, this is due to the low level of consciousness in society, the perception of permissiveness and impunity, insufficient material provision, gaps in legislation, or its low characteristics, which enables criminal organizations to spread their activities and seize more and more new territories and spheres of activity.

In developed countries corruption affects, in the main, some kinds of separate link (party, union, etc.), but the system of the developing country is less protected, especially because of low wages, therefore, organized criminal groups with significant funds easily get one or another form of support for their interests.

To a certain extent, corruption has a social conditionality, but as a result, negatively affects all spheres of life in the country. It destroys the economy, the attitude of people to power, thus reducing the nature of the state and its power structures. The culture and morality of the common people are also changing, as the phenomena of bribery, extortion and impunity among the power structures that are mirrorly reflected on the lower levels of governance become commonplace and memorized. One phenomenon generates another, there is a chain reaction and corruption itself has the ability to adapt to new realities, new power and new rules of the game.

Organized crime convincingly believes that everyone and everything has got its own price, and with such conviction attempts at bribes and rewards will never stop. And the change in this belief takes a long time, which often does not play in the interests of the authorities. It requires a change in the consciousness of society, the formation of the principle of observance and enforcement of laws for all citizens.

The term "corruption" comes from the combination of the Latin words soggei and rumpere (soggy – obligatory involvement of several representatives of one of the parties to the case, rumpere – to violate, break, damage, cancel). Over time, an independent concept – corrumpere – was formed, meaning participation in the activities of several (at least two) individuals, whose purpose is to damage the process of managing the affairs of society. Another word of Latin origin coruptio means bribing, spoiling, corruption.

Thus, in general, under corruption we mean corruption of persons who provide management of various affairs, in particular state ones, their dishonesty and not objectivity, unfairness for any reasons in relation to their duties, search of their source enrichment.

M. Tikhomirov considers corruption as a criminal activity in the field of politics or public administration, the use by officials the rights and authorities granted to them for personal enrichment. He deals with bribery with officials and bureaucrats, bribery for the lawful or unlawful provision

of benefits, protectionism – the nomination of workers on the basis of kinship, fraternity, personal devotion and friendship.

V. Ovchinsky binds corruption with bribing persons who are in the state or public service, receiving additional incomes, benefits and benefits for deliberate acts or inactivity (including in the interests of third parties) in contrary to the interests of the state and society.

A. Dolgova thinks that corruption is bribery of state or other employees and on this basis selfish use of them in personal or narrow-group, corporate interests of official authority, the authority and capabilities associated with them.

O. Misery states that corruption, in its broad sense, consists in the decomposition of society and state when state (municipal) employees, as well as persons authorized to perform both state and other management functions, including in the commercial sector, use his official position, the status and authority of the position occupied, contrary to the interests of the service or other persons and established norms of morality, for selfish purposes for personal enrichment or in group interests.

Considering the issue of criminal liability for giving a bribe, V.S. Lukomsky points out that burglary of officials (bribery) is only one component of corruption.

This allegation is justified, especially in terms of understanding the connection between corruption and organized crime. Today organized crime formations are not limited to bribes, which may have the character of one-time payment of services or a series of payouts over a period of time, but form a long-lasting relationship. Of course, for organized criminal groups, the second option is better because they do not have to constantly establish new relationships and take risks with the search for new patrons. In addition, long-term payouts allow you to exercise and control an official and keep him from unwanted for organized groups of actions, often this control becomes blackmailed if a person tries to refuse further the provision of his services.

In order to reach highest level of activity criminal groups use other means and forms of influence, for example, the use of friendly relations, coercion, the assignment of relatives to senior positions, which gives significant benefits in concluding agreements, obtaining personal property, access to diverse values . Fraud, counseling services for officials

with disproportionate payment for lectures and training, full material retention, extortion, etc. are used.

In addition, organized crime groups use corruption not only at the horizontal level, but also use it vertically, forming a strong link between officials in a government body and their representatives – corruption links. This allows them to provide certain stability in corruption relations, as well as the stability of ties, if the law enforcement bodies of the lower level corrupt person are exposed, the higher part of the criminals remains and the mechanism of their illegal activity remains indissoluble.

Corruptness, search and establishment of new corruption ties for organized groups is not only a necessary, but also vital part of their illegal activities. Corruption transforms the legislative field into the field of its own, informal relations at the state level, in the system of state power. And for organized criminal groups that seek to carry on their activities in other states, corruption in one state body is not enough, for them they need communications in various state bodies and at different levels.

V. Shcherban points out that corruption is only available where it becomes part of the management system – in many cases, it is so essential that the system does not function without it. The system of corruption is the weakest place for reformers, since the new government is unable to reform the system that it rules.

Realizing that there is a system of restraints and counterbalances between the branches of government, organized crime groups spread corruption in all branches of government. In addition, the appeal of prominent political and public figures who, due to their popularity, has access to the media, and thus to the possibility of convincing the general public of the legitimacy of certain decisions and actions, is of great importance. Criminals are often used by persons who enjoy a particular type of immunity, for example, representatives of embassies and consulates, deputies, missionaries, etc.

Thus, the understanding of corruption relations as a mandatory feature of organized crime, while understanding, not simply giving or receiving bribes for the provision of any service, but a constant connection of officials with organized criminals is logical and justified.

The danger of an organic combination of corruption and manifestations of organized crime has long been recognized by the international community. This is evidenced by the fact that the most

influential international organizations, formulating recommendations for improving the effectiveness of the fight against organized crime, pay particular attention to combating corruption. Thus, in the 1990 Congress of the United Nations „Guidelines for the Prevention of and Fight against Organized Crime" explicitly states that „the prerequisite for the development of crime prevention programs is the study of corruption, its causes, nature, consequences , the relationship with organized crime and measures to combat it".

In the United Nations Framework Convention Against Organized Crime of July 21, 1997, defining the concepts indicates that corruption is one of the three main means (two others, violence and intimidation), which enable organized crime leaders to obtain profits, control territories, external and internal markets, to continue their criminal activity and penetrate into the legal economy.

Establishing corruption links with public officials has always been among the priorities of organized crime, an integral part of their strategy and tactics, which was preferred to the use of open violence. The money paid in the form of bribes is considered to be the leader of a criminal world by successful investment, overhead, justified in terms of „advancement of business", success and ensuring impunity.

From this standpoint, the most frightening and vivid example of attempts by representatives of organized crime to penetrate into public authorities and governance is the example of Bolivia, where one of the leaders of the local drug cartel nominated for the post of President of Bolivia, while offering to pay all the external debt of the country at 12 billion dollars in exchange for personal integrity and security for organized crime.

The penetration of representatives of organized criminal structures into state authorities and local self-government has the following main goals:

– evasion of leaders and members of transnational organized crime from criminal responsibility;

– neutralization of investigative actions, operational searches and other measures carried out by law enforcement agencies in respect of organized criminal groups or their individual members;

– provision of the so-called „roof" for further criminal activity;

– gaining opportunities for capital increase, obtaining other unlawful advantages, etc.

It should be noted that the presence of corrupt bonds for organized crime formations and the connection of a corrupt official with such formations is the optimal formula for the coexistence of the two phenomena in terms of achieving a criminal outcome and security. Transnational organized crime tries to gain a corresponding position in the power structures of its countries, and corruption, in its turn, is interested in using the opportunities of national organized criminal groups (financial, organizational, etc.).

Therefore, widespread corruption necessarily leads to an increase in organized crime, and the qualitative and quantitative development of the latter necessarily entails an increase in the number of corruption manifestations and increasing the danger of their nature.

An important point in determining the link between corruption and organized crime, as well as transnational organized crime, is their understanding of each other's inalienable elements. According to O. Gurov corruption should be understood as the constant connection of officials with organized criminals.

Such a constant link indicates that corruption is a systemic phenomenon that reflects the process of the flow of crime itself into power in the country and the decisions of its power structures.

At the same time, corruption acts as a process of struggle for power, expansion of power and influence, and a means of preserving the already acquired power. The higher the hierarchical graduate is an official, the more power she enjoys, and her corruption relationship with criminal organizations creates for them greater privileges and protection of interests. This is especially true for political leaders of the country, various influential political figures, as well as members of their family.

In general, politicians who abused their power can be distinguished by three grounds. They: commit offenses „in the name of law and the law", use their powers for criminal purposes, and therefore their abuse is difficult to detect and stop; use public opinion and trust; often used for the sake of their criminal purposes the state apparatus designed to fight crime.

The United Nations Convention against Corruption of October 31, 2003, ratified by Ukraine on October 18, 2006, uses the following terms:

(a) „public official" means:

– any person who holds a post in a legislative, executive, administrative or judicial body of a state which is appointed or elected, whose work is paid or not paid, regardless of seniority;

– any other person performing any public function, in particular for a public authority or state enterprise, or provides any public service as defined in the domestic law of the State and as applicable in the relevant field of legal regulation of that State;

– any other person designated as a „public official” in the domestic law of the State. However, for the purpose of applying certain specific measures provided for by the Convention, "public official" may mean any person who performs any public function or provides any public service as defined in the domestic law of the State and as applicable in the relevant the field of legal regulation of that State Party;

b) "foreign public official" means any person who holds a position in a legislative, executive, administrative or judicial body of a foreign country that is appointed or elected; as well as any person who carries out public functions for a foreign state, in particular for a state body or state enterprise;

c) „official of an international organization” means an employee of an international organization or any person authorized to act on its behalf.

From these definitions of concepts, one can highlight the fact that they all relate specifically to public officials; persons who are called to perform any functions of the state, including at the international level. At the same time, each country has the opportunity to independently determine, in accordance with its domestic law, the range of those individuals whose actions may be subject to corruption.

Considering the practical understanding of the concept of corruption and its application, in particular, on the example of Germany, we see that distinguishing the following types of corruption:

– abuse of office for the purpose of enrichment (bribery, theft, other types of abuse);

– actions committed within the limits of official authority but in favor of specific legal entities or individuals;

– promotion of unfair competition, as well as disclosure of commercial secrets, which became known to one or another person in connection with the performance of its official functions;

– incorrect behavior of deputies (voting for remuneration, etc.).

At the same time, by analyzing approaches to understanding corruption, we can observe some of its dual role. On the one hand, one of the signs of organized crime, and especially of a transnational character, is the existence of persistent corrupted ties with public officials. On the other hand, corruption is often seen as a separate form of illegal activity. So, L. Shelley, analyzing the state of corruption and crime in Ukraine, considers their dynamics separate, fixing the growth of both crime and corruption.

With this statement one can agree, in the case when corruption refers to the bribery-corruption of civil servants, their abuse of power by mercenaries or other motives (individual benefits, in favor of third parties – physical or legal).

But, from the above, one can see the relationship between the two indicated parties. In order for a bribe or other component of the act to take place, the party to be baptized should be available – organized crime, and especially transnational, is the party to that. It should be noted that the connection between them should be stable, long, and not one-time.

As A. Nikiforov, in the US, in every criminal family, there is, at least, one post of corruptor, and the established order, according to which about one third of the proceeds of crime should be directed to the corruption of the authorities and justice.

V. Lapteacru, based on the connection between the categories of concepts „bribery – bribe-bribery-corruption", identified corruption as „a process of unlawful behavior involving officials who occupy positions in all branches of state power, commercial and cooperative structures, and trade in the powers granted to them for various kinds of remuneration, services, benefits, etc., which decomposes state and non-state structures, institutions, administrative apparatus, turning them into a servant of the criminal world, as a result of which corruption became a social pathology".

As V. Yatsenko notes, „corruption should be defined as a system of social ties of the criminal environment, primarily organized, which is manifested in bribery of state officials, misuse of their position for very useful purposes and other illegal actions, and provides the most organized crime favorable conditions for the implementation of illegal actions and the receipt of super-profits".

A. Dolgova notes the following signs in which corruption becomes an organized criminal activity of highly organized formations:

– carried out thoughtfully, organizations with distribution of criminal roles;

– in ensuring the secrecy of activities, including through clever ways to legalize criminal incomes and intimidating or eliminating unnecessary witnesses;

– with the purposeful creation of the most favorable conditions for organized criminal activity and expansion of the necessary corruption.

Issues of definition of the concept and essence of corruption are engaged, in particular, and American scientists. Thus, according to James Bellentine's Legal Encyclopedia Dictionary, corruption is distorting the designation of state bodies for personal gain. There are also such definitions as: a) an act committed for the purpose of granting certain advantages incompatible with the official duties of an official and the rights of others; b) the avoidance of political figures, employees of the state apparatus, businessmen and others from performing their official duties and government functions for the sake of personal, family or group interests in order to enrich and increase their social status.

The examples of definitions of corruption are rather interesting because they indicate that corruption is understood as the misuse of the advantages of its position not only by politicians and officials of the state apparatus, but also by business representatives.

According to Joseph Stieglitz, the president of the World Bank, corruption has many forms, and, consequently, the fight against corruption will have to be conducted on several fronts. It is impossible to fight the allocation of small sums of weak and poor countries, while ignoring the large-scale transfer of state resources to private hands, which took place, say, in Russia under Yeltsin.

In some countries, open corruption is primarily a form of contributions in favor of electoral campaigns, which oblige politicians to pay back to large donors for services in return. Small-scale corruption is bad, but systematic corruption in political processes can have even more devastating consequences. Contributions in favor of electoral campaigns and lobbying, which leads to the rapid privatization of infrastructure (before adopting the appropriate regulatory principles and attracting a small number of potential buyers), can be detrimental to development and without direct rejection of government officials.

In the context of the consideration of corruption as a factor-condition that determines transnational organized crime, it should be understood just in such a broad vision and not reduced to ordinary bribery. Since

transnational organized crime is trying to get as much influence over state power in the country, and in order to conspiracy and legalize its illegal revenues, gain control of certain areas of business, their monopolies, it seems quite logical that these activities will contribute to the manifestation of corruption, which at the same time is also a means to achieve these goals.

At the same time, it should not be taken into account that the corruption link between crime and government and business may also be based on the mechanism of intimidation widely used by crime. So, in order to incline any official to an act in favor of crime, often intimidation, hostage-taking of members of their families, kidnapping of children, etc. are often used.

Organized crime under the conditions of globalization, tries to influence and political life, lobbying for making it profitable solutions, creating public opinion with the help of controlled media. All this happens against the background of bribery and the elimination of disadvantaged persons. Organized criminal gangs undermine democracy through corruption, and in some countries, their activities are becoming a new form of authoritarianism. Organized crime also negatively affects political life.

Accumulated funds go to bribe politicians, create a positive image in society, and so on. The aspiration of political power characterizes a qualitatively new stage in the development of organized crime. In this context, one can cite the example of the Sicilian and American Mafias, the Japanese Yakuza, Colombian drug cartels. " "We do not kill judges or ministers, we buy them," said the leader of the Colombian cartel Kali – Hilberto Rodríguez Orehuela.

Corruption generates such negative phenomena as awareness of the population of the population of the state system, moral damage to society, a significant difference between declared and real values, inefficient allocation of resources, unprofitable spending of state budget funds, stimulation of lawlessness and the spread of criminal structures, usurpation of power, economic losses, etc.

The systematic bribery is ultimately enshrined in the organization of a clearly defined structure with established functions and control, and the merger of organized crime with political power constitutes an impediment to justice, leads to the theft of national wealth, the creation of privileges for dominant groups, the impact of criminal capital on state structures on

the model of Colombia, the discrediting of ambushes free market, harm to investments, etc.

Organized criminal gangs have connections not only with state institutions, but also with prohibited political movements and terrorist organizations. In some parts of the world, organized crime has caused political instability and economic destabilization, wars of low intensity. As J. Nay rightly observes, corruption in many countries has become an integral part of national culture, a manifestation of a particular type of civilizational development that offends the categories of morality and law, thereby provoking its spread on an international scale.

The Transparency International Corruption Measuring Index (IPC) measures the level of perception of corruption in the public sector of a country and is a composite index based on surveys conducted among experts and business circles. Despite the fact that changes in the index occur slowly, significant statistical changes were noted in relation to some countries located throughout the CPI range, demonstrating both high and low results. Transparency International has underscored the unequivocal link between the high level of corruption and bribery with the failure of state institutions and the poverty of the population. However, even in those countries that are in a more privileged position, they are concerned about the differences in the application of anti-corruption legislation, which requires a tougher approach to the problem of combating corruption.

The basis of the favorable mentality for corruption is the life of Ukrainians on the principle of finding an individual solution to their problems, which is also a consequence of historical distrust of state institutions. Such mentality of Ukrainians helps to find ways to overcome their problems, and the opacity and complexity of permitting and control procedures in the relations between government and citizens contribute to the prosperity of such ways.

In Ukraine, the primary accumulation of capital by organized criminal groups occurred at the expense of purely violent criminal cases – extortion, extortion, drug trafficking, etc. At the same time, the establishment of corruption ties or the direct delegation of criminality of "their people" to administrative, law enforcement or other decision-making bodies began. Subsequently, such persons at the expense of financial or other opportunities created the mode of the most assistance in promotion, so that the level of solved issues has increased. On the other hand, as practice shows, government officials often find contact with

criminal elements that could sell their services more expensive and provide additional funding.

In the mid-1990s, one of the decisive trends in the development of the situation, which was observed in almost all regions of Ukraine, was already a certain withdrawal of criminal groups from open violent actions and traditional criminal crafts and directing them to direct or concealed participation in the legal business. Most criminal authorities tried to legalize the proceeds of crime through established or controlled commercial structures, where they occupied official but usually secondary posts, not related to material liability, and directed subordinate groups to use predominantly economic methods of generating profits.

More and more funds were invested in the establishment of special relations with those state functionaries, whose competence is to resolve important issues. By that time, about 60% of stable criminal formations had corrupt links in various power structures and administrations (about 40% of corporate executives and almost 90% of commercial entities' managers were in corruption relations).

Unlike the initial stage, when corruption links were established in order to ensure security in the implementation of specific criminal actions and those involved in them, there is a growing desire to acquire influential positions in public authorities that will allow them to effectively influence the adoption in the future. management decisions in their interests. With considerable material resources, representatives of the criminal environment directly participated in the elections, and sometimes they were elected by deputies of different levels, and so on.

Such a penetration of organized crime into power in Ukraine, both at the regional and central levels, has accelerated the formation of oligarchic clans, which, in turn, has become a powerful impetus for deepening the process of corrupting power – defending the interests of the clans, the authorities inevitably turned into corrupt, criminal . The logical conclusion of this process was that in some regions and industries the right to own and dispose of the real values of society almost completely turned into representatives or progenitors of organized crime.

In recent years, the process of integration of regional criminal groups into interregional and international criminal communities is becoming more and more crucial factor in the crime situation in Ukraine. Under the new conditions, criminal organizations from different countries of the world are trying to unite their efforts, which leads to the formation of transnational criminal communities. Diversification of criminal activities

is noted. Organized criminal gangs tend to take control of all new spheres, spread the „exchange of experience", improves the practice of illegal activities, security systems.

Large-scale corruption in power, economic structures, law enforcement and control bodies created a fertile environment for the development of these processes.

A special danger is the prevalence of criminal ties with corrupt law enforcers. In the past, it confirms that the active and long-term activity of organized crime groups, their vitality is largely contributing to the participation in them or „patronage" by some law enforcement officers.

Law-enforcement agencies and crime, merging, create an environment in which effective struggle against illegal manifestations becomes almost impossible. These features are clearly traced in areas of transnational organized crime such as drug trafficking, smuggling operations, illegal migration and human trafficking.

Drug transactions remain the most profitable type of criminal business. Drug trafficking has become an important source of funding for transnational organized crime groups. Drug traffickers of Ukraine establish close cooperation with organized criminal groups of the Baltics, Russia, Poland and Turkey. Its illegal activities are carried out with the assistance of specialists in the chemical industry, professional pharmacists.

Corruption of controlling bodies, especially in the field of migration policy, the presence of a significant number of illegal migrants in Ukraine creates attractive conditions for the activity of drug structures. So, in the territory of our state and in the CIS countries there are racks of transnational organized criminal groups that unite immigrants from African countries (Nigeria, Ghana, South Africa, Sierra Leone, Cameroon, Angola, Ethiopia) and are involved in large-scale operations on illegal international drug trafficking.

The further spread is the formation of transnational organized criminal groups, which include both citizens of Ukraine and foreigners – natives of our state. Structures of this kind set up channels for drug smuggling using Ukrainian territory, use our citizens as drug traffickers, involving local criminal structures in their activities.

Anti-smuggling, its negative processes continue to take place, acquire more sophisticated and organized forms, cause significant damage to the Ukrainian economy, to a large extent, destabilize the crime situation in the state. Transnational organized crime structures operating in this area are

characterized by a dynamic response to changes in economic conditions, attempts to attract high officials, employees of state agencies and services, law enforcement agencies, qualified lawyers, etc.

Gradually structured and placed under the control of transnational organized crime formations and a kind of criminal business, such as the organization of the transfer of illegal migrants across the territory of Ukraine. There is a tendency to increase the "professionalism" of the organizers and to work out more sophisticated tactics for committing criminal actions.

The functioning of criminal mechanisms in the field of illegal migration is also largely provided by individual corrupt representatives of the authorities.

Foreigners who are illegally on the territory of Ukraine draw up foreign passports with constituent data of citizens of Ukraine and photographs of the customer, issue of false certificates of the established sample on registration, etc. Such unlawful activities involve a group of people, consisting of both executives and ordinary employees with a clear division of functions between them (coordination of actions, customer search, distribution of monetary remuneration, direct preparation of documents, etc.).

Trafficking in human beings and their use in criminal business is one of the key places in transnational organized crime. Due to a number of negative circumstances, Ukraine, among some other former Soviet republics, has become one of the main suppliers of the so-called "living" commodity.

Criminal business in the field of sexual services is being developed with the involvement of a number of functional units – private travel agencies, firms providing services for allegedly employment abroad, a network of recruiters involved in the search and engagement of women, groups that carry out shipment to destination countries, etc. Effective functioning of criminal infrastructure becomes possible again due to corruptions in medical institutions and law enforcement agencies.

The territory of Ukraine continues to be used by leaders of organized crime organizations of other countries to hide from the justice system. Corruption also serves as a favorable factor in establishing corrupt links in government and administration, the said persons receive legal passports on fictitious installation data (or installation data of third parties), official documents for the right to store gas and hunting weapons, rights to drive motor vehicles means legalizing this way in our country.

In general, corruption as a condition for the spread of transnational organized crime is a rather complex phenomenon. On the one hand, it is one of the most prominent features that characterize organized crime, on the other hand, is a means to achieve the main objectives of criminal activity.

Corruption itself is a means that allows organized crime to become transnational, based on a new level of activity. Due to the corruption of certain representatives of foreign states, international organizations, transnational organized crime, new territories are emerging for the activity and the formation of markets for the sale of their goods and services.

It should be borne in mind that corruption also involves the possibility, or even the need to reward corrupt individuals for their activities or inactivity. Given that the level of development of different countries is unequal, as well as the funding of officials of their state apparatus, the standard of living of other members of society is different, and to live in abundance want to virtually everyone, such a material differentiation allows representatives of organized criminal groups to incline to their side the people they need, with the difference only in the type and amount of remuneration.

CONCLUSIONS

Ukraine is still a young state, not without errors in search for ways and means of its development, but in order to achieve its maximum heights and worthy representation on the international scene, it must definitely be a deep-rule state with judicial guarantees of the rights and freedoms of its citizens. The problem of corruption remains one of the most important and rather acute problems of our country today.

Corruption, to a degree, reflects both the state of society, its consciousness, the legal culture, the level of its moral and ethical development. Not only the state, but every citizen of the country, independently of the sphere of activity and occupation, should fight corruption, beginning with himself, rejecting and not allowing the possibility of involving himself in participation in any corruption acts. Unfortunately, in our society, the majority not only allows the possibility of corruption, but consciously aspires to it, thereby destroying any positive efforts of the state in establishing and improving the efficiency of its functioning in all spheres.

Current preventive work does not achieve the goal. On the prevention of corruption should be a set of measures – preventive, controlling, if

necessary – operatively-wanted, investigators, proved in a legal manner to court decisions.

Along with other conditions, corruption allows organized crime to be protected from the influence of the state and its law enforcement agencies. Organized crime groups use a variety of corrupt practices that benefit from obtaining property, contracting, and evasion.

Organized crime convincingly believes that everyone and everything has their own price, and with such conviction, attempts at bribes and rewards will never stop. And the change in this belief takes a long time, which often does not play in the interests of the authorities. It requires a change in the consciousness of society, the formation of the principle of observance and enforcement of laws for all citizens.

In addition, organized crime groups use corruption not only at the horizontal level, but also use it vertically, forming a strong link between officials in a government body and their representatives – corruption links. This allows them to provide certain stability in corruption relations, as well as the stability of ties, in case of disclosure by law enforcement bodies of a corrupted person of the lower level, the criminals remain a higher link and the mechanism of their illegal activity remains inseparable.

Establishing corruption links with public officials has always been among the priorities of organized crime, an integral part of their strategy and tactics, which was preferred to the use of open violence.

The determining factor in the crime situation in Ukraine is the process of integration of regional criminal groups into interregional and international criminal communities. Under the new conditions, criminal organizations from different countries of the world are trying to unite their efforts, which leads to the formation of transnational criminal communities. Diversification of criminal activities is noted.

Ukraine on the way of active counteraction to organized crime, and now implementing and reforming the law enforcement and judicial systems, should maintain their effectiveness in the fight against and fight against crime, create the legal basis for qualitative interaction among themselves in achieving the ultimate goal. One of the priorities of its domestic policy should be the desire to effectively counter organized crime and minimize the negative consequences for society of its activities.

SUMMARY

The article is devoted to the study of corruption and organized crime, their interconnection. Corruption is considered as a threat to the formation and development of a law-governed state. Corruption directly affects the development of Ukraine as a rule of law. Disregard for the law, manipulation of laws, distributed among law enforcement and judicial authorities, affects the attitude to the right of individual citizens, entails disbelief towards him and power in general. An overview of the connection between corruption and organized crime was conducted. Corruption feeds organized crime first and foremost into economic, it becomes an indispensable condition for its existence. Along with other conditions, corruption allows organized crime to feel protected from the influence of the state and its law enforcement agencies. Organized crime groups use a variety of corrupt practices that benefit from obtaining property, contracting, and evasion. It is indicated that corruption as a condition for the spread of organized crime is a rather complicated phenomenon. On the one hand, it is one of the most prominent features that characterize organized crime, on the other hand, is a means to achieve the main objectives of criminal activity. It is established that organized crime formations use corruption not only at the horizontal level, but also use it vertically, forming a stable link between officials in a state body and their representatives – corruption links. This allows them to provide certain stability in corruption relations, as well as the stability of ties, in case of disclosure by law enforcement bodies of a corrupted person of the lower level, the criminals remain a higher link and the mechanism of their illegal activity remains inseparable.

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Information about the author:
Miniailo N. Ye.
Candidate of Juridical Sciences,
Associate Professor at the Department of Special-Legal Disciplines
of the V. I. Vernadsky Taurida National University
33, Ivana Kudri str., Kyiv, 01042, Ukraine

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RESPONSIBILITY FOR ADMINISTRATIVE MISCONDUCT

Petkov S. V.

INTRODUCTION

The urgent issue of Ukrainian administrative law reformation should be the task connected with the creation of national scientific model of administrative delictology, reflecting adequately the essential novelty in social role definition as well as the purpose of the branch of law mentioned. In administrative delictology the guarantee of supremacy of law principle is of great significance, according to which the main characteristics in determining the administrative law should perform not "administrative", and even more, not its "punitive" functions, but other two functions such as "law-providing", associated with the provision of exercise of human rights and freedoms; "human rights protecting", associated with the protection of violated rights by public authorities.

Public legal relations in the state are decisive for its very existence. Of course, sometimes there are cases of violation of the established mechanism of interaction of different subjects, so administrative misconduct is committed. And then the necessity of mandatory return of relations in the legal direction and punishment of a guilty person in the occurred incidents has arisen. The theory of administrative law sets its task as determination of the legal nature of such misconduct – administrative torts – the subject structure and their relation with other types of misconduct.

1. Administrative Delictology as a Specific Part of Administrative Law

Administrative delictology is a specific part of administrative law along with a general (administrative law theory) and special (administrative activity) part. In order to outline a socio-legal model of implementation of legislation on torts it is necessary to present a range of legal axioms, namely:

– Administrative delinquency – a special type of torts (legal offences);

– On the level of public danger, administrative torts are divided into administrative crimes and administrative misconduct;

– The subject of an administrative tort can only be a person (a public one, civil servant, etc.) vested with powers;

– Administrative offence is a social phenomenon and, thus, a special kind of public offence.

The list of axioms given above is not exhaustive, but it gives the opportunity to derive the main formula for the place of an administrative tort as well as administrative delictology in the system of law in general and in the legislation of Ukraine in particular during its reformation and bringing it into line with global requirements. Thus, the administrative tort should be considered an unlawful, guilty (intentional or negligent) action or inaction committed by a person vested with powers (by an official of public authorities), resulted in material or moral damage to a person (physical, legal) or society.

When it comes to administrative offences, it should be understood that this is a complex social phenomenon, associated with different legal institutions, state mechanisms, etc. Administrative offences are unlawful actions (acts) of officials carrying out public administration. Quite often, public administration is confused with economic activity, officials of public authorities with company administrators, therefore, in legal acts, for example, in the Code on Administrative Offences of Ukraine, there are articles on the responsibility of heads of private law legal entities for certain wrongful acts. In the same way, misunderstanding of the basic nature of administrative phenomena leads to the fact that state administration is perceived as an activity of a district police inspector for the identification of persons who manufacture home-made alcohol or spread sexually transmitted diseases.

All violations of law can be divided into types in accordance with such a criterion as the field in which they are committed: medical, road transport, state administration, etc.

The violation of law can be divided into types according to the subjects that commit them: citizens, stateless persons or foreigners, civil servants, military servicemen. Some kind of distinction is also made between administrative offences depending on the position of the offender: whether it is an official of state authorities or local self-government, or an employee of law enforcement or judicial bodies. The

following question is of great significance: whether they were elected or appointed; if it was a position of a public political figure or state official. That is, for generic gradation, we can use a huge number of criteria and approaches; the only fact remains that the person, who can commit an administrative offence and, accordingly, be brought to administrative liability, must be in the public service.

The issues of administrative responsibility of officials of public authorities were considered in the national legal science even in the Soviet times. However, at that time, responsibility for administrative offences was perceived as a responsibility in general for any misconduct and executed under the non-judicial (administrative) procedure. Therefore, there was a confusion of concepts. In addition, together with administrative legal relations, economic relations were mixed too. Economic activity was carried out only by the state. The directors of enterprises and the whole apparatus were state officials or representatives of the government, namely, government administrators.

As a result, in the Soviet Union, the responsibility for economic misconduct was considered as administrative. This was clear, since only the state could conduct economic activity in the interests of the state. In addition, all actions that violated any rule or norm of conduct were perceived as actions against the state. At present, legislation created in the middle of the last century is in force; most scholars were educated in this period. It was a different system, and, consequently, another model of the state and a model of legal relations. Today, post-Soviet countries are experiencing a reception of Soviet law, instead of developing civilized law. This circumstance led to maintenance of the provisions of Part 1 of Art. 9 of the Code on Administrative Offences of Ukraine, defining the term "administrative offence (misconduct)" as an unlawful, guilty (intentional or negligent) action or inaction that infringes on public order, property, rights and freedoms of citizens, on the established procedure of administration and for which the law stipulates administrative responsibility"[1]. It is obvious that the use of the terms "misconduct" and "administrative offence" as equivalent is inappropriate for at least three reasons, namely: firstly, misconduct can not be identical to offence (tort), which does not have a significant public danger, and therefore the offence

[1] Кодекс України про адміністративні правопорушення. – К. : Національний Книжковий Проект, 2011. – 224 с.

is wider phenomenon and includes both crime and misconduct; secondly, an administrative offence can not be committed by a citizen who does not hold a public position, and again, if we are talking about an administrative offence, then according to the degree of public danger it should be divided into an administrative crime and administrative misconduct; thirdly, misconduct is committed not only in the administrative area, but also there are disciplinary misconduct, customs, tax, medical, road transport misconduct, etc. So, incorrectness and confusion of concepts are laid down even in the division of offences itself, and it does not correspond to the law theory and the methodology of scientific cognition.

At present, the state actually provides immunity to public servants against legitimate demands of citizens to whom they have committed unlawful acts. The only thing that can be done by the victim is to cancel an unlawful act. Citizens not only do not have the right to make responsible, but in fact they do not know how to raise the issue of bringing the civil servant to legal responsibility. Only civil servant can make responsible another civil servant for any type of responsibility. Citizens have the only right to file complaints about the impunity of those who violated their rights[2].

Officials of public authorities and local self-government perform certain functions of economic nature while carrying out administrative activities. Accordingly, during their economic activity, they may commit certain misconduct. This may be untimely payment of utility bills, and violation of certain sanitary-epidemiological or fire regulations.

Also, officials of public authorities commit other misconduct or crimes and bear responsibility for their commission in accordance with the current legislation. In the case of committing such non-administrative, but economic or other misconduct, there should be an examination on the fact of the misconduct. This proceeding must be carried out by a competent authority or official, and the guilty persons must be held liable for their actions or inactions. We should emphasize that responsibility should be borne by both direct executors and heads of those units where, due to their negligence, the conditions were created led to the commission of an unlawful act.

[2] Бахрах Д.Н. Как защитить себя от произвола / Д.Н. Бахрах // Российская юстиция. – 2003. – № 9. – С. 5.

The grounds for administrative responsibility for offences encroaching upon exercise of the people's will and the established procedure for its provision are an administrative misconduct violating the established procedure for exercise of the people's will. The object of these administrative offences is public relations in the field of exercise of the people's will and the established procedure of its provision[3].

Under modern conditions of the state-creating, the subject of administration is responsible for all the adverse effects caused by unlawful or inefficient use of powers. It is this approach that is one of the conditions for the effective functioning of state administration, and, consequently, political stability in the state. As practice shows, the main emphasis is placed on the rights of public authorities, officials, and the responsibility is not always sufficiently distinguished, in particular for false decisions and actions, and inaction[4].

2. Administrative Torts as Unlawful Actions of Officials of Public Authorities

An administrative tort should be considered as an unlawful, guilty (intentional or negligent) action or inaction committed by a person vested with powers (an official of public authorities), resulted in the material or moral damage to the person (physical, legal) or society.

The issue of administrative torts is governed by a wide range of normative-legal acts. However, basic provisions of law, providing for the responsibility for administrative torts committed by officials, laid down in Article 14 of the Code on Administrative Offences of Ukraine, namely, "Responsibility of Officials": "Officials are subject to administrative responsibility for administrative offences related to non-observance of established rules in the field of protection of the administration order, state and public order, nature, public health and other rules ensuring execution of which is included to their official duties" [5].

[3] Циверенко Г.П. Адміністративні правопорушення, що посягають на здійснення народного волевиявлення та встановлений порядок його забезпечення в аспекті проекту Виборчого кодексу України [Електронний ресурс] / Г.П. Циверенко // Форум права. – 2010. – № 4. – С. 905–909. – Режим доступу: http://www.nbuv.gov.ua/ejournals/FP/2010-4/10cgpvku.pdf.

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[5] Кодекс України про адміністративні правопорушення від 7 грудня 1984 р. // Відомості Верховної Ради Української РСР. – 1984. – Додаток до № 51. – Ст. 1122 (із змінами та доповненнями).

In this norm, the main list of functions of officials has been stipulated. The analysis of this article gives grounds for the conclusion that the concept of an official in the Code on Administrative Offences of Ukraine is directly related to the performance of such a person's official duties, regardless of where they hold a position: in the structure of a state body, institution or other organization.

Administrative responsibility is a legal responsibility of officials of public authorities. It is even more appropriate to say the bodies of public authorities, because officials of local self-government also perform public functions. It is they who provide the great share of administrative services to citizens.

Thus, administrative responsibility is a form of legal responsibility. As legal responsibility is divided into responsibility for misconduct and responsibility for crimes, in the same way administrative responsibility can be applied for administrative misconduct and administrative crimes. It should be noted that the peculiarity of responsibility of officials of public authorities is that they bear, in addition to administrative ones, also labor responsibility (labor misconduct is described in the Labor Code), as well as all other types of responsibility for violation of the norms of confidentiality regimes, permissive requirements.

The crimes in the field of administrative activity, in particular, involve: Art. 364 "Abuse of power or official position"; Art. 365 "Excess of power or official powers"; Art. 3652 "Abuse of powers by persons providing public services"; Art. 366 "Service falsification"; Art. 367 "Service negligence"; Art. 368 "Bribery"; Art. 368. "Illegal Enrichment"; Art. 3684 "Bribing a person who provides public services"; Art. 369 "Offering or giving a bribe"; Art. 3692 "Improper influence"; Art. 370 "Provocation of bribes or commercial bribery".

A state official bears disciplinary responsibility for an official misconduct (and in some cases, administrative one), for an official crime – criminal responsibility. It is correct to distinguish the official misconduct from the official crime correctly in each individual case only by carefully examining the circumstances that accompany these actions (or inaction), and taking into account the specified criterion[6].

[6] Якуба О.М. Советское административное право (Общая часть) / О.М. Якуба. – К. : Вища школа, 1975. – С. 41.

The term “public service” is relatively new for our country. For the first time, the concept of “public service” has been used in the Code of Administrative Judicial Procedure to outline the substantive jurisdiction of administrative cases. Therefore, according to the Code of Administrative Judicial Procedure of Ukraine, the public service is the activity on state political positions, professional activity of judges, prosecutors, military service, alternative (non-military) service, diplomatic service, other state service, service in the authorities of the Autonomous Republic of Crimea, and local self-government bodies.

The Supreme Administrative Court of Ukraine in the Statement on the study and generalization of the procedure for consideration by administrative courts of disputes concerning acceptance of citizens to the public service, record of service, dismissal from the public service, concludes that the specified norm of the public service stipulates the types of service by the list which is not exhaustive. The Supreme Administrative Court, when distinguishing the types of public service for law enforcement, believes that a legal regulation of their activities, according to which one can determine the types of public activities that deserve attention during the study of judicial practice is significant. It is as follows:

- Activity on state political positions;
- Professional activity of judges;
- State service;
- Service in self-government bodies[7].

3. Legislation Governing the Issues of Responsibility in the Field of State Service

The law, governing the issue of civil service responsibility involves, first of all, the Constitution of Ukraine, in which, although there are no provisions that would determine the model of civil service development, the ideology of the current Constitution speaks about the functioning of the civil service as a democratic institution and reveals its socially oriented nature[8].

[7] Довідка про вивчення та узагальнення практики розгляду адміністративними судами спорів з приводу прийняття громадян на публічну службу, її проходження, звільнення з публічної служби (частина І) [Електронний ресурс]. – Режим доступу: http://www.vasu.gov.ua/.

[8] Желюк Т.Л. Державна служба : навч. посіб. / Т.Л. Желюк. – К. : Професіонал, 2005. – 576 с. – С. 36.

It should be noted that the Code on Administrative Offences of Ukraine, as well as the Laws of Ukraine "On Ratification of the United Nations Convention against Corruption"[9]; "On ratification of the Criminal Law Convention on the fight against corruption" [10]; "On ratification of the Additional Protocol to the Criminal Law Convention on the fight against corruption"[11]; "On ratification of the Civil Convention on the fight against corruption"[12] remains the basic legal acts that establishes the responsibility of officials for administrative torts.

Legal acts which are the basis of anticorruption legislation include such Laws of Ukraine: "On Corruption Prevention"[13]; "On State Service"[14]; "On Fundamentals of National Security of Ukraine"[15] and so on.

Among the laws mentioned above, some issues of certain types of the state service are governed by other laws such as: customs service – the Customs Code of Ukraine[16]; diplomatic service – by the Law of Ukraine "On Diplomatic Service"[17]; police service – by the Law of Ukraine "On National Police"[18]; the service in the security service – by the Law of Ukraine "On the Security Service of Ukraine"[19]; military service – by the Law of Ukraine "On Military Duty and Military Service"[20]; state executive service – by the Law of Ukraine "On State Executive Service"[21]. The interrelated laws and normative-legal acts form the

[9] Про ратифікацію Конвенції Організації Об'єднаних Націй проти корупції : Закон України 18 жовтня 2006 р. // Відомості Верховної Ради України. – 2006. – № 50. – Ст. 496.

[10] Про ратифікацію Кримінальної конвенції про боротьбу з корупцією : Закон України від 18 жовтня 2006 р. // Відомості Верховної Ради України. – 2006. – № 50. – Ст. 497.

[11] Про ратифікацію Додаткового протоколу до Кримінальної конвенції про боротьбу з корупцією : Закон України від 18 жовтня 2006 р. // Відомості Верховної Ради України. – 2006. – № 50. – Ст. 498.

[12] Про ратифікацію Цивільної конвенції про боротьбу з корупцією : Закон України від 16 березня 2005 р. // Відомості Верховної Ради України. – 2005. – № 16. – Ст. 266.

[13] Про запобігання корупції: Закон України від 7 квітня 2014 р. № 3206-VI [Електронний ресурс]. – Режим доступу: http://zakon.rada.gov.ua/.

[14] Про державну службу в Україні: Закон України від 17 листопада 2011 р. № 4050-VI // Відомості Верховної Ради України. – 2012. – № 26. – Ст. 273.

[15] Про основи національної безпеки України : Закон України від 19 червня 2003 р. // Відомості Верховної Ради України. – 2003. – № 39. – Ст. 351.

[16] Митний кодекс України // Відомості Верховної Ради України. – 2012. – № 44–45. – Ст. 552.

[17] Про дипломатичну службу : Закон України від 20 вересня 2001 р. [Електронний ресурс]. – Режим доступу: http://zakon.rada.gov.ua/.

[18] Про Національну поліцію : Закон України від 02.07.2015 № 580-VIII [Електронний ресурс]. – Режим доступу: http://zakon.rada.gov.ua/.

[19] Про Службу безпеки України : Закон України від 25 березня 1992 р. [Електронний ресурс]. – Режим доступу: http://zakon.rada.gov.ua/.

[20] Про військовий обов'язок і військову службу : Закон України від 25.03.1992 № 2232-XII [Електронний ресурс]. – Режим доступу: http://zakon.rada.gov.ua/.

[21] Про державну виконавчу службу : Закон України від 24 березня 1998 р. [Електронний ресурс]. – Режим доступу: http://zkdvs.uzh.ukrtel.net/.

anticorruption legislation of Ukraine, which is currently repeatedly systematized in scientific and practical collections of Anticorruption Laws, anticorruption legislation, etc.[22].

The Code on Administrative Offences of Ukraine has traditionally been considered as a system-forming normative document in the field of administrative responsibility. However, it has been already noted, that the provision of Art. 14 of the Code on Administrative Offences of Ukraine does not meet the requirements of the present because it can not satisfy modern legal practice on the following essential positions: the necessity of introducing into the CAOU an article that, without specifying the direct concept of an official, their types and features, boundaries and peculiarities of bringing to administrative responsibility of officials, actually lists the sections of the code containing articles that provide for the responsibility of this category of citizens of Ukraine, is considered as the minimum necessity. Taking into account the obvious connection between the Criminal Code of Ukraine and the Code on Administrative Offences of Ukraine, some administrative offences differ from crimes only because of their public danger. O. M. Kruglov suggests enshrining in the Code on Administrative Offences of Ukraine not only the range of common objects on which officials infringe, but also the very definition of the term "official", similar to the definition contained in the Criminal Code of Ukraine, only with the amendment to that part of public relations regulated by norms of administrative law[23;24].

Today, based on the human-centered approach (V. B. Averianov), we are talking about the fact that the authorities provide the citizen with services in the field of state administration (administrative services) and carry out activities to protect their rights and legitimate interests. The implementation of legal responsibility by public authorities with such a purpose is a manifestation of the protection of public (common) interest of society. Accordingly, any violation of public interest should have a negative effect on the offender based on a single algorithm according to

[22] Антикорупційні закони України : укл. М.І. Хавронюк. − К. : Атіка, 2009. − 112 с.

[23] Круглов О.М. Доказування і докази у справах про адміністративні правопорушення посадових осіб : дис. … канд. юрид. наук : 12.00.07 / О.М. Круглов. – Х., 2003. – 223 с.

[24] Пєтков С.В. Побудова сучасної ефективної публічно-правової моделі відносин між владою та громадянином на основі римського права / С.В. Пєтков // Піднесення до права : збірник наукових праць до 60-річчя з дня народження д-ра юрид. наук, професора, заслуженого юриста України Валерія Петровича Пєткова / упоряд.: О.Д. Коломоєць, Н.В. Максименко, А.А. Манжула, Є.Ю. Соболь, Р.І. Стецюк, О.А. Троянський, О.С. Юнін ; за заг. ред. С.В. Пєткова. – Кіровоград : ФОП Зєнова Т.М., 2011. – С. 24–34.

the field or branch of the act committed. Thus, based on the development of a fractal model of tort law relations, we consider that responsibility for misconduct committed in any field is public responsibility and can be divided according to the field (branch) into customs, tax, medical, land responsibility, etc. In any case, such gradation does not contradict the fundamentals of the law theory (O. F. Skakun), and moreover, it enables their use as axioms for norm-making (N.O. Armash) under the conditions of reforming the legal system of Ukraine.

The feature of administrative misconduct is illegality (means that action or inaction is expressly prohibited by administrative-legal norms). The feature of illegality also points to impermissibility of the law analogy, which contributes to the strengthening of the rule of law, includes the possibility of bringing to administrative responsibility for acts not provided for by legislation on administrative misconduct; guilty (it foresees the presence of person's attitude to wrongful act and its consequences); punishment (it means that an administrative misconduct is only recognized the unlawful, guilty action for which the law provides for the use of administrative penalties); public danger or social harm.

The legal literature identifies the features characterizing the official as a special subject of legal responsibility: the legal norms on the responsibility of officials for violations in service take into account the features of the service as a type of labor activity; they are subject to increased responsibility, since the consequences of official offences are negatively detected outside the position; establish special measures of responsibility for official offences (reduction in the position, lowering in a special title, deprivation of title of a state official); bringing an employee to one type of responsibility does not mean that the same act qualifies as another type of offences, which results in a certain type of legal responsibility[25].

In the context of the study conducted, it is worth noting that the concept of a "specific subject" in the meaning of general characteristics of administrative misconduct violates the system of scientific and theoretical coordinates of administrative law. Administrative offence (tort), misconduct or crime, can only be committed by an official of public authority.

[25] Лазарев Б.М. Специфика ответственности должностных лиц / Б.М. Лазарев // СССР – ГДР: Государственная служба : сб. науч. трудов. – М., 1986.

Such field of state administration as electoral relations requires a special approach in issue of officials' responsibility. According to I. O. Lugovoi, under the conditions where the mass media are full of reports of numerous gross violations of election law, and violations in electoral technologies are acquiring increasingly new forms of mass character, low indexes of administrative responsibility make it possible to conclude that there are serious drawbacks both in the current legislation, and in the activities of state authorities, which, in their functional responsibilities, ensure the rule of law in this area[26].

We refer again to Art. 14 "Responsibility of Officials". Any action or inaction of officials of public authorities, if at the territory or in the area for which they are responsible, an offence is committed, may be determined as unlawful. In this case, there is a presumption of guilt. If in case of bringing a citizen to responsibility it is necessary to prove his guilt, then, on the contrary, an official must prove his innocence.

If at the territory or in the area for which an official of state authority a citizen, a public organization or other official sees the presence of the offence, in that event, an administrative case must be commenced on the application of the persons concerned. For example, Art. 166-5 on the discrimination of entrepreneurs by the power bodies and management, in case if other official's unlawful actions are detected during consideration, may become the basis for a criminal case against them.

The Law of Ukraine "On Prevention of Corruption" defines a corruptive offence of law as "an act that contains features of corruption committed by a person specified in part one of Article 3 of this Law, for which the law establishes criminal, disciplinary and/or civil-legal responsibility". The revision of the current law does not connect the concept of corruptive offence with administrative misconduct and administrative responsibility. The administrative responsibility begins for so-called "administrative offences related to corruption". The generic object of such offences, stipulated by the Code on Administrative Offences of Ukraine, is public relations that determine the content and procedure for the legal activity of the subjects of power authorities, which is established by the lawmaker. In turn, public relations in the field of

[26] Луговий І.О. Адміністративна відповідальність за правопорушення, що посягають на здійснення народного волевиявлення та встановлений порядок його забезпечення : дис. … канд. юрид. наук : 12.00.07 / І.О. Луговий. – Х., 2002. – С. 4.

normal functioning of state administration, public (state) service and related financial, property and other relations may be the direct object[27].

In accordance with the Code on Administrative Offences of Ukraine[28], administrative offences associated with corruption are violation of restrictions on the plurality and combination with other types of activity (Article 172-4 of the CAOU); violation of legal restrictions on the receipt of gifts (Article 172-5 of the CAOU); violation of the requirements of financial control (Article 172-6 of the CAOU); violation of the requirements for prevention and settlement of a conflict of interests (Article 172-7 of the CAOU); illegal use of information that has become known to a person in connection with the exercise of official powers (Article 172-8 CAOU); failure to take anti-corruption measures (Article 172-9 of the CAOU); violation of the ban on placement of sports bets related to the manipulation of official sports events (Article 172 9-1 of the CAOU).

Other offences committed by officials can be: violation of the rules of land use (Article 53); distort or conceal the data of the state land cadastre (Articles 53-2); violation of the term for issuance of a state act on the right of ownership of a land plot (Articles 53-5); violation of the legislation on the State Land Cadastre (Articles 53-6); violation of the rules of water resources protection (Article 59); violation of budget legislation (Article 164-12); violation of the legislation on procurement of goods, works and services of state mail (Articles 164-14); unlawful use of state property (Article 184-1 of the CAOU); violation of the procedure or terms for submission of information about orphans and children left without parental care (Article 184-2 CAOU); creation of conditions for organizing and conducting meetings, rallies, street trips or demonstrations in violation of the established procedure (Article 185-2 CAOU); interference with the appearance of a people's assessor in the court (Article 185-5 CAOU); failure to take measures for a separate court order or a separate resolution of a judge or the submission of a prosecutor (Article 185-6 CAOU); evasion from the lawful demands of the prosecutor (Article 185-8 CAOU); disclosure of information about

[27] Курс адміністративного права України / за ред. В.В. Коваленко. – К. : Юрінком Інтер, 2012. – 808 с.

[28] Науково-практичний коментар Кодексу України про адміністративні правопорушення. Станом на 2 квітня 2012 р. / Н.П. Бортник, К.І. Бєляков, С.В. Пєтков, О.І. Остапенко [та ін.] ; за заг. ред. С.В. Пєткова, С.М. Морозова. – К. : Центр учбової літератури, 2012. – 1248 с.

security measures against a person who has been taken into protection (Article 185-11 CAOU); violation of the law on state secrets (Article 212-2 CAOU); violation of the right to information (Article 212-3 CAOU); violation of the procedure for the registration, storage and use of documents and other media containing confidential information that is property of the state (Article 212-5 CAOU).

It should be mentioned that all misconduct stipulated in the Code on Administrative Offences of Ukraine, are committed either by citizens or representatives of economic subjects due to negligence, carelessness or neglect by state official, public authorities of their official duties. These actions are made intentionally (Art. 10). For instance, we can give articles connected with violations of the legislation requirements on labor and labor protection (Art. 41), evasion from participation in negotiations concerning conclusion, changes or amendments of collective agreement, deed (Art. 41-1), violation or non-performance of collective agreement, deed (Art. 41-2), failure to present information for collective agreements, deeds conduct (Art. 41-3). In this case officials of public authorities can not know about the fact that violations of these articles of the Code on Administration Offences of Ukraine act at the territory subordinated to them.

An essential factor for the reform of Ukrainian administrative law is that it is based on democratic principles of common European significance from the very beginning. Of course, one must realize that the legal standards existing in the countries around the world, including the administrative-legal standards, are quite diverse, and there is no a “single European” (and even more global) type, so to speak, it does not exist in a pure form. At the same time, there are, of course, some common features of legal institutions already successful in foreign countries, and it is fully justified to be guided by them.

Recently, in a number of countries in Western Europe (Germany, France, Italy, Great Britain, etc.), serious changes have been made in the system of legislation in the field of combating official violations of law. This fact quite clearly proves the need to eliminate such a phenomenon not only abroad, but also in Ukraine. Thus, during the reform of administrative law in relevant legislative drafting works, it would be very useful to take into account and use those principles that have already proven themselves well in the practice of the post-Soviet countries.

4. Incompliance of the Code on Administrative Offences of Ukraine of 1984 with the Present-Day Realities

The Code on Administrative Offences of Ukraine was adopted in 1984. During the same period, similar codes were adopted, based on the Principles of administrative legislation (1980), in all the Union republics, as well as in many countries of the Warsaw Pact and in countries that were in friendly or relations dependent on the USSR. Analyzing the modern Code on Administrative Offences of Ukraine, it should be understood that it has been and remains the Soviet law in its content. That is, a part of legislation, which began to form in the 1920's with the complete rejection of the "bourgeois law", existed in the previous period of history. For more than 70 years of existence, Soviet law was formed as a special legal family, the main feature of which is the priority of public interest over the private. Public law was perceived by Soviet jurisprudence as the state law, and all other legal branches played the role of auxiliary ones.

In understanding of the lawmaker of the Soviet period, all citizens, institutions, departments, ministries, etc. were part of a unified management system whose purpose was to build communism in the whole world. That is why every participant in this development had to comply strictly with the rules of administrative legal relations, and in case of breach of administrative orders, to bear administrative responsibility for this. In accordance with this doctrine, any misconduct of a citizen was considered as offence. Article 176 "Manufacture, storage of home-made alcohol and apparatus for its production" (by the way, without the purpose of marketing) and dozens of others is a vivid reflection of such an approach to administrative law.

However, in the next period of administrative law development in an independent state, the Code on Administrative Offences of Ukraine (as an all-consuming, comprehensive support link of punitive and repressive normative base) was constantly added by the composition of various misconducts, requiring systematization or punitive reaction from officials. "Rules of conduct", "restrictions", "established requirements" and "established procedure" were introduced in law every time. Continuous codification led to nonsense.

All these uncoordinated actions, combined with legal nihilism of the population and legal illiteracy of law enforcement bodies, led to the

absurdization of procedural part of the Code on Administrative Offences of Ukraine as well when the examination and review turned into raider take-over. The CAOU became a document through which officials frightened entrepreneurs, persons conditionally released from punishment, sexually transmitted diseases distributors, and others. This way, in many articles of the code the "official", "official of authorities" subdivisions, heads, deputy heads, etc. are the subject that imposes penalties, and the subject to which the penalty is imposed.

We are even not surprised by such articles as 164-4 "Untimely delivery of revenues" and others. It is quite clear that Clause 3 of Art. 255 "Persons entitled to draw up protocols on administrative offences", according to which the owner of an enterprise, institution, organization or authorized body has the right to draw up administrative protocols in accordance with Art. 51 "Minor larceny of other's property" and Art. 179 "Brewing of beer, alcoholic, low-alcoholic beverages at production".

Of course, the lawmaker constantly strived to provide the code with administrative content. However, to a greater extent, this led to the emergence of articles such as "Failure to comply with legal requirements of officials of the body ...", to intimidation of entrepreneurs and citizens, while not creating the necessary conditions to meet the basic needs. In addition, due to the disorder in creation of ministries, departments, agencies (in accordance with decrees and orders of the executive branch of power), the need for relevant changes in the codified law no longer corresponds to the very principle of the division of power into legislative, executive and judicial.

Today it is reasonable to carry out step-by-step codification of administrative legislation norms in particular fields and institutions of administrative-legal regulation.

This codification process can be conventionally divided into certain stages. Of course, it is impossible to talk about their exact division, but we emphasize that the relevant processes had started right before the start of the administrative reform in 1998. The legislation requires the transfer of the norms of the Code on Administrative Offences of Ukraine to the basic codes: the Land Code, the Code of the mineral resources, etc., in the same way it was done during the time of Customs legislation creation.

It should be emphasized that structuring the administrative law can be carried out by issuing codified acts on particular fields and institutions

of administrative-legal regulation[29]. Some parts of the articles and certain articles of the code, together with other laws and by-laws, may become full codes: the Medical Code of Ukraine, Social, Informational, Road Transport Codes, etc. Fourthly, the creation of the Administrative Code of Ukraine directly as a code of substantive law, which will contain rules regulating the activities of state authorities and state authorities for committing official offences.

Previously V. B. Averianov strongly affirmed that "in the system of administrative law there should be regulation of administrative responsibility of all types, which are now regulated by secondary legal branches (financial, economic law, etc)[30]. It is also emphasized that administrative law has polycentric structure of normative set, as opposed to the structurally mono-centric (with one profile code) branches[31]. Therefore, it is logical to propose to adopt, among other codes (financial, law enforcement, medical, etc.) a separate code, which regulates issues of responsibility of officials towards citizens (society) and a person, rules of conduct of officials (state employees). It should also contain rules on administrative responsibility for the commission of unlawful actions by the administration. In the same code, a proceeding in an administrative offence case (administrative procedures, administrative penalties, etc.) should be filed[32].

The same normative-legal act should define the concept of administrative misconduct as an act that constitutes a violation of administrative legal relations (by the official, the representative of the government) of the provisions of law by the subject as well. The role of such a codified act will be successfully played by the reviewed Code on Administrative Offences of Ukraine.

What should the Code of Ukraine on Administrative Offences contain? First, there must be the rules and norms of behavior of state officials and other state employees who carry out administrative activity.

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[29] Пєтков С.В. Кодифікація законодавства про відповідальність – основа адміністративно-правового регулювання діяльності публічної влади в Україні / С.В. Пєтков // Держава та регіони. Серія: Право. – 2009. – № 1. – С. 84–89.

[30] Авер'янов В.Б. Реформування українського адміністративного права: необхідність оновлення науково-теоретичних засад / В.Б. Авер'янов // Актуальні проблем и сучасної науки в дослідженнях молодих вчених. – Сімферополь, 2005. – Спеціальний випуск : у 2 ч. – Ч. 1. – С. 24–30.

[31] Державне управління: проблеми адміністративно-правової теорії та практики / [В.Б. Авер'янов, О.Ф. Андрійко, Ю.П. Битяк та ін.] ; за заг. ред. В.Б. Авер'янова. – К. : Факт, 2003. – С. 43–47.

[32] Пєтков С.В. Громадський порядок: місце й роль місцевої міліції в протидії проступкам проти громадського порядку / С.В. Пєтков // Право та державне управління. – 2010. – № 1. – С. 44–55.

These norms are specified in the Law of Ukraine "On Citizens' Appeal", in job descriptions that regulate the relations of officials with citizens. Secondly, there must be the norms concerning administrative misconduct. At present, these norms are contained in both anti-corruption legislation and the Code on Administrative Offences of Ukraine. Thirdly, the peculiarities of proceedings in cases of administrative misconduct, among which should be stipulated that the control over the activities of state officials is carried out by the heads of the relevant bodies and services; internal security services, the public prosecutor's office and the public.

Thus, with the introduction of the reviewed Code on Administrative Offences of Ukraine instead of the universal, comprehensive role assigned to administrative law in the Soviet law-making and law enforcement system, where it justified and confirmed the legal administrative party's ambition and communist engagement of state power in all, without exception, public and private relations, administrative law will take a worthy place among other public legal relations, consolidating its leading significance in public law.

Today, administrative law governing administrative activities of bodies, public officials is a chaotic accumulation of norms, rules, requirements and techniques that do not enough correlate with each other. A vivid representation of the Soviet law reception is the Code on Administrative Offences of Ukraine, as well as other codes, laws, instructions, rules, etc. In many cases, the illegal activity of officials of public authorities is a reflection of both the legal system established in the state and the general state of legal relations in which all citizens of the country take part. The saddest thing is that at the moment, creation of the latest European legislation does not mean leaving the legal dead end in which our society got stuck. Under European legislation, the Asian essence of patriarchal relations is hidden. Legislation is used as a "screen" or as a means to hide the self-interested actions of officials and their business partners.

Today, during the time of crisis that, in various manifestations, has begun to put tough conditions for all mankind once again, it is critical to find out what we really mean when we talk about law, legal relations, delictology, responsibility, etc. Political scientists, sociologists, legal scholars state that we must contemplate an interesting socio-political phenomenon of the transition from one system of the state (socialist) to

another (capitalist), while distorting both the dogmas of the first and the postulates of the second. Therefore, even in the most generalized sense, administrative delictology should be defined not as a "managerial" or "punitive" law, but as "law to ensure and protect human rights". Of course, the main task is not to give a new scientific interpretation of the concept of administrative delictology, but give the interpretation corresponding to the law theory, the essence of phenomenon, and so it can be implemented in new approaches to the analysis and coverage of this institution, and, most significantly – reflected in the administrative legislation adequately.

The state is a manifestation of democracy. Normative acts (laws and by-laws) must be examined carefully for compliance with democratic principles. The actions of each official must be constantly monitored and verified by the public, by any citizen. And in case of detecting any minor violations of law or resolution as well as in actions of the official of public authority, such act should be cancelled, and victims should receive indemnification. Every offence, every attempt to distort the very essence of law, must be stopped, and guilty persons must be punished.

The construction of a democratic legal social state as well as the further development of civil society require the introduction of new conceptual foundations of public authority activities based on international standards. Under the modern economic, political, social conditions, the state faces the primary task – to improve the current legislation in the direction of increasing its efficiency, in order to ensure manageable activity of state authorities, improve the management of all socio-economic fields of life in the country, ensure the fulfillment of assumed obligations by the government and requirements of international organizations.

Steps to bring Ukrainian legislation to the world standards should be taken in a complex and coordinated manner and avoid creating additional conflicts in the country's legal system. The transparency of the process should be ensured by extensive discussions with the public, scientific community and the popularization of legislative acts of the authorities among the people.

The proposed approach should create the theoretical basis for creation of a system of normative and legal acts in the area of responsibility for public misconduct. In accordance with the hierarchy of

normative legal acts, the construction of this system should start from the Basic law, covering the basic principles, concepts and stages of proceedings in cases of public misconduct. Laws and by-laws adopted in compliance with the provisions of the Basic law will require to be technically reviewed in the future in accordance with the requirements of standard norm-making technology and international standards.

CONCLUSIONS

Based on the study conducted and designing the fundamental two-dimensional scheme of tort division in accordance with type-generic nature, we can state that this is the simplest equation of public relations, where a clear algorithm is used: tort (offence) is divided by the degree of public danger to a crime and misconduct; the object of the offence (by type) is public relations; the range of public relations (rules of conduct), for violation of which comes the responsibility (the person, whose guilt has been proved, is punished), it is determined by law; the object of offence on the basis of generic feature is the field of public relations, in which (against the rules, norms governing these relations) a tort is committed; direct objects of violations can also be grouped, united, separated into different groups, types, subgroups depending on certain features. Moreover, in order to clarify such a scheme in delictological studies, we can introduce other components in this equation as well: institutions, regimes or subjective attributes, etc. With appropriate logical and gradual analysis, as a result of such actions, we will obtain a more comprehensive representation of the phenomenon studied.

In such scheme administrative torts should be placed in a vertical rather than a horizontal plane, i.e. they are also carried out in a certain field, namely, in the field of state administration. They can only be executed by officials with the state powers. Of course, these officials can work in different domains of social and economic life of the country, but they are united by a common feature – the subject of committing offence (tort), either crime or misconduct. This is a fundamental difference of the administrative delictology concept which is proposed. It is in this way that justice and true equality before the law can be achieved, being the integral parts of sovereignty of the people.

Improving the legislation of Ukraine in accordance with the concept of mutual responsibility of citizens and the state will contribute to the

further development of Ukrainian law and society in the direction of increasing the responsibility of public authorities, reducing corruption and protecting human and citizens' rights and freedoms, and educating citizens in the spirit of respect for the legislation, the law and the state.

SUMMARY

The article deals with the issue of responsibility for administrative misconduct. Public legal relations in the state are decisive for its very existence. Of course, sometimes there are cases of violation of the established mechanism of interaction of different subjects, so administrative misconduct is committed. And then the necessity of mandatory return of relations in the legal direction and punishment of a guilty person in the occurred incidents has arisen. The theory of administrative law sets its task as determination of the legal nature of such misconduct – administrative torts – the subject structure and their relation with other types of misconduct.

The fundamental two-dimensional scheme of tort division in accordance with type-generic nature is characterized. In such scheme administrative torts should be placed in a vertical rather than a horizontal plane, i.e. they are also carried out in a certain field, namely, in the field of state administration. They can only be executed by officials with the state powers. Of course, these officials can work in different domains of social and economic life of the country, but they are united by a common feature – the subject of committing offence (tort), either crime or misconduct.

Information about the author:
Petkov S. V.
Doctor of Judicial Sciences, Professor,
Deputy Head of the Department,
Head of the Department of National Security of the Department
of Anti-Corruption Legislation and Justice and Security
of the Ministry of Justice of Ukraine

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PECULIARITIES OF CRIMINAL REGULATION OF COERCIN TO MARRIAGE PROVIDED BY ARTICLE 151-2 OF THE CRIMINAL CODE OF UKRAINE

Syngaivska I. V.

INTRODUCTION

Article 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms proclaims that men and women who have reached the age of marriage have the right to marry and form a family in accordance with national legislation, which regulate realization of this right. Article 5 of Protocol 7 of the "Convention on the Protection of Human Rights and Fundamental Freedoms" is essential addition that provide the equality of each spouse, since each spouse has equal civil rights and duties in relations with each other and with their children, as well as in relation to marriage, marriage status and divorcement.

The legal prescription of the Convention on "the equality of each spouse on marriage, marriage status and divorcement" is realized in the wording of article 151-2 of the Criminal Code, which defines the criminal prohibition of coercion of a person to marriage or to continue a forcibly contracted marriage, or to enter cohabitation without marriage, or to continue such cohabitation. Criminalization of socially dangerous acts in art. 151-2 of the Criminal Code was made in order to implement the provisions of the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence and the fight against these phenomena"[1].

The need for Ukraine to sign and ratify the Istanbul Convention is determined by many different reasons. These are the obligations of Ukraine to the Council of Europe, the need to approximate the legislation of Ukraine to the legislation of the European Union in the context of

[1] Про внесення змін до Кримінального та Кримінального процесуального кодексів України з метою реалізації положень Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Закон України 6 грудня 2017 року № 2227-VIII URL : zakon.rada.gov.ua/laws/show/2227-19#n57

Ukraine's full membership in the EU, and the need to change the cultural perception of the problem by our people[2].

The question about rationality of criminalizing coercion has caused a lot of discussion among scientists, experts, practitioners. In the conclusion of the scientific and expert administration was noted that the approval of a new version of article 151-2 proposed by the draft law may lead to excessive criminalization of relations, which are currently regulated by the current legislation of Ukraine, and also make it impossible to comply with the provisions of the Istanbul Convention 2011[3].

Among the comments of the General Law Department pointed that coercion of a person to marriage without socially dangerous consequences does not reach that level of public danger when the act in accordance with article 11 of the Criminal Code should be considered as a crime. At the same time, "enforced holding of a person, coercion to cohabit, "luring" for this purpose onto the territory of another state" with sufficient grounds must be qualified as articles 146 "Unlawful deprivation of freedom or abduction of a person", 154 "Coercion to have sexual intercourse", 149 "Human traffic or other unlawful agreement toward person", etc [4]. There is an opinion that the criminalization of coercion of a person to marriage will lead to excessive competition of criminal law norms, and it is likely that another "dead norm" will appear in the Criminal Code of Ukraine. Considering this, it is necessary to raise the question of the decriminalization.

At the same time, it is worth supplementing current criminal law with the general norm of the "Coercion" crime, which will make it possible to reduce the level of causality of the law on criminal liability[5]. Also attempts of the draft law authors on amending the Criminal Code of Ukraine to the section "Crimes against freedom, honor and dignity" are positively evaluated. It's supposed addition of the new article "Coercion

[2] Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С. 19.

[3] Висновок Головного науково-експертного управління на проект Закону України «Про внесення змін до деяких законів України у зв'язку з ратифікацією Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» від 14.11.2016 р. № 4952. URL: w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648

[4] Зауваження до проекту Закону України «Про внесення змін до Кримінального та Кримінального процесуального кодексів України з метою реалізації положень Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» (реєстр. № 4952) URL: w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648

[5] Андрушко А. Щодо доцільності криміналізації примушування до шлюбу. *Jurnalul juridic national: teorie şi practică.*2018. № 6 (34). С. 173

to Marriage”[6]. Criminal liability for coercion to marriage (Article 151-2 of the Criminal Code of Ukraine) is considered as an example of excessive criminalization, which is pointless and has no necessary grounds[7].

It should be noted that the analysis of the criminal legislation of fifteen states shows that thirteen of them have a special norm “Coercion to Marriage” (Great Britain, Norway, Germany, France, Austria, Switzerland, Sweden, Denmark, Belgium, Spain, Bulgaria, Serbia, Montenegro) and two states (Finland, Hungary) have the general norm "Coercion". An adequate changes in the criminal legislations of European states were made in connection with the signing and ratification of the Istanbul Convention. Therefore, in this context, the national criminal legislation on coercion to marriage is assessed as fully complying with the current trends that exist regarding the criminal law protection of the rights of personal freedom and marriage and family relations in the criminal legislation of European states and in accordance with international agreements.

The regulation of coercion to marriage hadn’t comprehensive criminal law analysis. On the pages of juridical publications there is a lively discussion on the implementation by Ukraine provisions of the Council of Europe Convention on the prevention of violence against women and domestic violence and the fight against these phenomena. Important changes were made to the norms of criminal liability for crimes against human life and health, crimes against freedom, the honor and dignity of the person, and crimes against sexual freedom and inviolability. The above said arguments we considered as actual and appropriate for the study of this subject. The scientific research on the issues of criminalization of coercion to marriage we regard perspective.

1. Basic research material with full basis of received results

On its preventive meaning, the criminal law prohibition of coercion to marriage is aimed at changing the social and cultural patterns of behavior of men and women for achieving the elimination of prejudices,

[6] Литвинов О.М., Данильченко Ю.Б. Пропозиції та зауваження до проекту Закону України «Про внесення змін до деяких законів. України у зв’язку з ратифікацією Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами (реєстр. № 4952 від 12.07.2016 р.)» Законодавче забезпечення правоохоронної діяльності: навчальний посібник / За заг. ред. д-ра юрид. наук, доц. В.В. Сокуренка. Х.: Стильна топографія, 2017. С. 892-896.

[7] Васильєв А.А., Юртаєва К.В. Реалізація положень Стамбульської конвенції в законодавстві України про кримінальну відповідальність: системно -правовий аналіз внесених змін і доповнень. *Порівняльно-аналітичне право*. 2019. С. 279-284.

customs and all other occurrences based on the idea of inferiority or superiority of one of the sexes or stereotyped roles of men and women.

According to Article 37 of the Istanbul Convention, "the parties shall take the necessary legislative or other measures to ensure that intentional behavior is criminalized, which consists of: 1) coercion an adult or a child to marriage; 2) luring an adult or child into the territory of a party or state other than the one in which he or she resides, for coercion this adult or child to marriage"[8].

Therefore, the wording of Article 151-2 of the Criminal Code of Ukraine on establishing responsibility for coercion "to continue forcibly marriage, or enter the cohabitation without marriage, or to continue such cohabitation" is much broader than provided in the Istanbul Convention, which requires only criminalization of "coercion an adult or a child to marriage"[9].

A necessary condition for the registration of marriage is the free and independent expressed mutual will of the persons getting marriage, confirming their intention to start a family on the basis of signing marriage. The social danger of coercion to marriage is that during state registration of marriage, there is a demonstration of the free consent of a woman and a man to state registration of civil status acts authority and as a result of endowing the spouses with mutual rights and duties and their further protection by the state. But in reality, there can be an illegal influence on the free expression of a woman and a man will to marry, which is not permissible (Art. 24 Family Code) and silencing information that is juridical important to authority of state registration of acts of civil status.

Failure to comply with the condition of free and independent mutual expression of the will of persons results in invalidation of the marriage. The invalidity of marriage is a special type of family law sanction applied in cases of violation of marriage conditions provided for by the

[8] Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Конвенція Ради Європи Конвенція Ради Європи та Пояснювальна доповідь Стамбул (Туреччина) 11.05.2011 р. URL: rm.coe.int/1680093d9e.

[9] Висновок Головного науково-експертного управління на проект Закону України «Про внесення змін до деяких законів України у зв'язку з ратифікацією Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» від 14.11.2016 р. № 4952.) URL:w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648

legislation, and means the annulment of law consequences that occur with a valid marriage[10].

The list of grounds for the invalidity of marriage defined in the Family Code of Ukraine is exhaustive and is grouped into three categories:

- The first category – is the so-called absolutely invalid marriages that break the three foundations of marriage: monogamy, the legal capacity of persons wishing to marry and the absence of close kinship between them. Such a marriage does not need to be declared invalid by a court with indication of any evidence; therefore, the civil status registration authority is obliged to annul the act of such marriage only at the request of the concerned person.
- The second category – is marriages that are recognized as invalid by the court on the grounds that the marriage is fictitious or the marriage was registered without the free mutual consent of the woman or man (the consent of the person is not considered free, in particular, when at the time of registration of the marriage the person suffered from severe mental illness disorder, was in a state of alcoholic, narcotic, toxic intoxication, as a result of which it did not fully realize the significance of its actions and (or) could not control them, or if the marriage was registered as a result of physical or mental violence). For recognition marriage as invalid in such cases it is necessary to give related evidence, such as documentary evidence of permanent separate residence, the testimony of witnesses, certificates of medical institutions about mental health of one of the spouses, the conclusions of experts and so on.
- The third category – marriages that may be declared invalid by the court if there are violations defined by legislation in the following cases: if it is registered with a person who has not reached the age of marriage and who was not given the right to marry; registered between the adopter and the child adopted by him without the provision of a preliminary court decision; between the cousins ; between aunt, uncle, nephew and niece; registered with a person who keep secret his serious illness or illness that is dangerous to the spouse and (or) their descendants. In such cases, an

[10] Щодо визнання шлюбу недійсним https://zakon.rada.gov.ua/rada/show/na005697-98

essential role belongs exactly to the court, since it is entitled to declare the marriage invalid or refuse to satisfy the claims[11].

Marriage can be declared as invalid when coercion to marriage happened, when registration of marriage was as a result of physical or mental violence, if the marriage is registered with a person who has not reached the marriageable age and who was not given the right to marry, only if evidence is presented in court.

The will, honor and dignity of the person, particularly in family relations, are main direct object of coercion to marriage[12]. In our opinion, will, honor and dignity should be considered as a subsumer object of coercion to marriage. Regarding the definition of the main direct object of coercion to marriage, it should be used the category "freedom". Freedom is the basis of the theory of natural law. Freedom in juridical aspect is versatile: freedom can be personal, social, political, economic, cultural, and so on. Personal freedoms include freedom of movement, freedom to choose an occupation, the ability to act according to one's discretion and one's will, freedom of thought and speech, freedom of worldview and religion, the right and freedom to dispose oneself[13]. Thus, the personal freedom of a person should be declared as the main direct object of coercion to marriage. Guided by a definite structure of personal freedom, we see that coercion to marriage is an interference on the ability to act according to one's discretion and one's will and freedom to dispose oneself.

Taking into account that there is an interference not only on family relations, but also on actual family relations, as indicated in the wording of the article "to enter into cohabitation without marriage, or to continue such cohabitation". At the same time, there is an interference on personal freedom (as to make a personal decision) in marriage, family relations (including actual marriage relations). The dignity of the person, sexual freedom and sometimes sexual inviolability, physical and mental inviolability should be declared as an additional obligatory object. In case

[11] Петрожець О.В Визнання шлюбу недійсним: підстави, порядок та правові наслідки) URL: www.desn.gov.ua/index.php?option=com_content&view=article&id=7032%3A2014-02-06-10-19-08&catid=353%3A2012-03-22-14-34-14&Itemid=3172&lang=ua

[12] Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.101

[13] Щадило О.І. Філософсько-правове розуміння свободи людини URL:http://ena.lp.edu.ua:8080/bitstream/ntb/34772/1/71_454-459.pdf

of violation of any human right or freedom, the dignity of this person always suffers. Therefore, human dignity is declared as an additional obligatory object. Dignity is an objective attribute of a person, which reflects its unique and unrivalled value. From the moment of birth, dignity of each person is the similar, "equal" with the dignity of all other people. The understanding of this by all individuals leads to the formation of each person's dignity, the expectation of respect by other people, the attitude to defend his rights, as well as the recognition equal rights of all people[14].

According to the legislation, person's dignity is an additional obligatory object, but besides dignity physical and mental development, sexual inviolability, is also an object of crime if the person has not reached 16 years. And this is reflected in the qualified crime of coercion to marriage in the case of committing this crime against a person who has not reached the age of marriage.

In determining the victim of coercion to marriage, gender equality is ensured, it can be both a man and a woman.

The objective features of this crime is characterized by actions in the such forms: 1) coercion of a person to marriage; 2) coercion of a person to continue a forcibly contracted marriage; 3) coercion a person to enter into cohabitation without marriage; 4) coercion a person to continue such cohabitation; 5) the inducement of a person to move to the another territory than it lives, with the purpose of marriage or cohabitation.

A.A. Dudorov and M.I. Hovronyuk, in its doctrinal interpretation defines "coercion" as the use of physical violence or the threat of its use against the victim or his/her close person, or blackmail – the threat to destroy or damage the property of the victim, or kidnap the victim or deprive of his/her freedom, or disclose information about the victim that wishes to keep secret or otherwise restrict the rights, freedoms or legitimate interests of the victim (or his/her close person). Particular forms of coercion are qualified additionally on other articles of the Criminal Code[15]. Considering this definition, we should examine it in the context of Art. 151-2 of the Criminal Code of Ukraine, what has been covered by the concept of "coercion", and what requires additional qualifications.

[14] Конституція України. Науково-практичний коментар. Петришин О. В., Погорілко В. Ф., Притика Д. М., Рабінович П. М., Савенко М. Д. та ін. К. : Видавничий Дім «Ін Юре», 2003 70 с.

[15] Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.102.

Coercion in criminal law is usually defined as an illegal mental influence on the consciousness of the victim, aimed to bring it to a state in which the person is internally ready to submit to the requirements of the subject of coercion. As a result, the victim is limited in the ability to act on his own will (the will in this case is not totally suppressed), being forced to choose the behavior that conflicts to his desire[16]. The term "coercion" is often used in the provisions of the Criminal Code of Ukraine (Articles 134, 142, 143, 154, 157, 174, 180, 258-1, 280, 300, 301, 303, 355, 369-3, 373, 386 404 of the Criminal Code of Ukraine).

Thus, in Part 2 of Art. 180 of the Criminal Code an authentic interpretation of "coercion" is given. For example, forcing a cleric through physical or mental violence to conduct a religious ceremony. So as we see, coercion is committing by using methods of physical or mental violence to some actions (in our studying aspect to marriage, to enter into cohabitation, etc.). However, the legislator does not always use a unified way in the authentic interpretation of terms. Article 258-1 of the Criminal Code contains a regulation "coercion to commit a terrorist act by using deception, blackmail, a vulnerable state of person, or by using violence or threat of it". Consequently, the five ways of socially dangerous actions are presented in the corresponding norm "coercion".

For this position it should be noted that coercion is: 1) firstly, always against the will of the victim; 2) secondly, it is the influence on the human consciousness regarding his behavior, his doing or not doing of particular actions; 3) thirdly, coercion (in means of physical and mental violence) is used by the guilty person for manipulating victim and his choice, to act on his own will. Therefore, coercion can be committed by using violence or threatening to use it, or using blackmail. Using deception – is an effect on the mind of person by reporting false information or keeping in secret juridical important information. Thus, with deception or with using a vulnerable state of person – there is no overt influence (but there is covert influence) on the will and consciousness of the victim for dominating his/her behavior. Therefore, the public danger of coercion is in the overt influence of the victim's decision and position by using physical or mental violence (including blackmail), imposing one's desire. Blackmail – is unlawful coercion, consisting of threats to disclose particular information

[16] Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С. 158.

and circumstances. This information and circumstances is necessary or desirable to keep in secret for the honor and reputation of the threatened person[17]. So the main thing with using mental violence, useful for this particular case, is not about the characteristics of the threats and not even in fact of the threats, but the incentive possibilities of any negative impact on the person[18].

According to the Explanatory Note to the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence and the fight against these phenomena, the term "coercion" refers to the use of physical or psychological force[19]. In our opinion, it should be used instead of the wording "psychological force", "mental violence", the difference is essential.

The crime is completed at the time of marriage procedure, in which at least one of the parties did not give voluntary consent. So, the crime is considered to be consummated from the moment of the committing of actions that are covered by the concept of "coercion of a person". That is, from the moment of the corresponding impact by the use of physical or mental violence on the victim regardless of its effectiveness (that is, regardless of whether the marriage was entered into or not, whether the person entered into cohabitation or this did not happen).

Marriage – is a family union of a woman and a man, registered with the state registration of civil status acts authority (Art. 21 of the Family Code of Ukraine). In turn, the state registration of marriage is established to ensure the stability of relations between a woman and a man, to protect the rights and interests of spouses, their children, and in the interests of the state and society.

In the theory of family law on various grounds distinguish the following types of cohabitation[20]:

– de facto marital relations (concubinate) – unregistered in state bodies marriage, free cohabitation and common housekeeping by a man and a woman without any legally established mutual obligations;

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[17] Баженов И. Шантажь как уголовное преступленіе. Москва: Из. «Юридического вестника», 1878. С. 18.

[18] Гуня І.І.Види насильства в Кримінальному праві. *Форум права*. 2014. № 2. С. 102.

[19] Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Конвенція Ради Європи Конвенція Ради Європи та Пояснювальна доповідь Стамбул (Туреччина) 11.05.2011 р. URL: rm.coe.int/1680093d9e.

[20] Войнаровська О. Фактичні шлюбні відносини як одна із форм співжиття жінки та чоловіка. *Юридична Україна*. 2015. № 3. С. 44-54.

– guest marriage – is a family that spends time together, but everyone lives separately, from time to time they can live in each other place, the rest of the time they consider themselves free from family responsibilities;

– open marriage – similar to traditional marriage, but it allows sexual relationships with other men and women;

– communal marriage – is a family in which several men and several women live together. The family lives on the principle of "commune", when everything is common – men, women, children;

– seasonal marriage – is a family limited in time, when the couple agrees in advance about the length of their stay together, with the termination they decide either be separate or continue they relationship for the same period;

– rational marriage – is a family that is created with a predetermined purpose of achieving a definite economic, domestic household, professional, sexual level;

– homosexual marriage (same-sex) – is a family union created between partners of the same sex[21].

Given these types of cohabitation, it should be noted that forcing a person to cohabit without marriage is not only coercion into de facto marriage relation. Guided by the strict sense of wording interpretation of the of Article 151-2 of the Criminal Code we suppose that criminal and law prohibition have the effect on coercion to all types of cohabitation.

In accordance with Art. 16 of the UN Convention on the Elimination of All Forms of Discrimination against Women[22], measures should be provided to eliminate discrimination against women in all matters relating to marriage and family, and in particular, to provide equality of men and women: a) an equal rights to enter marriage; b) an equal rights to free choose of a spouse and to enter into marriage only with their free and full consent; c) an equal rights and obligations during the marriage and after its dissolution, and others.

So, the principle of voluntary marriage acts not only at the stage of its registration, but also during the time of being married, which makes it possible to voluntarily dissolve the marriage. According to part 4 of article 56 of the Family Code of Ukraine, each spouse has the right to stop

[21] Войнаровська О. Фактичні шлюбні відносини як одна із форм співжиття жінки та чоловіка. *Юридична Україна*. 2015. № 3. С. 44-54.

[22] Про ліквідацію всіх форм дискримінації щодо жінок: Конвенція Організації Об'єднаних Націй. URL: zakon.rada.gov.ua/laws/show/995_207

the marriage relationship; coercion to stop marriage relations, coercion to preserve it, including coercion to have sexual intercourse through physical or mental violence, is a violation of the right of the wife/husband on liberty and security of person and may have legal consequences[23].

Part 4 of Article 56, as amended on 22.12.2006, should reflect a legislative prescription in the form of a requirement: therefore "a violation of the wife's/ husband's right to liberty and personal inviolability may have consequences established by law" must be changed into "must have consequences defined by law". That will indicate the application of the criminal liability in case of use of physical or mental violence against the victim. Thus, the legislative provision in part 4 of Art. 56 of the Family Code of Ukraine needs changes and should be in the following wording: "Coercion to stop the marriage relationship, coercion to preserve it, including coercion to have sexual intercourse through physical or mental violence, is a violation of wife's/husband's the right on liberty and security of person and must have consequences defined by law". So the corresponding legislative prescription will display the consequences in the form of responsibility for marriage coercion, including criminal liability.

Based on the actual cases of coercion to marriage, there are two types of actions: coercion a person to marriage and luring a person abroad with purpose to coercion her/his to marriage. This is due to the fact that some victims of coercion to marriage are forced to marry in the country of residence, and many others are first taken to another country (often to the country of the ancestors, where they are forced to marry with the citizens of this country)[24].

According to Part 2 of Art. 37 of the Istanbul Convention, it is determined that intentional behavior, which consists in luring an adult or child into a state other than he or she resides, for coercion that adult or child to marriage, should be criminalized. In the explanatory paper to part 2 the act of luring a person abroad with purpose to coercion to marriage against the will is criminalized. Marriage does not have to be necessarily registered. The term "luring" refers to any behavior in which the criminal lures the victim to another country with the help of excuses or fictional reasons, such as visiting a sick relative. The intent should point to the fact

[23] Сімейний кодекс України від 10.01.2002 р.URL: zakon.rada.gov.ua/laws/show/2947-14

[24] Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Конвенція Ради Європи Конвенція Ради Європи та Пояснювальна доповідь Стамбул (Туреччина) 11.05.2011 р. URL: rm.coe.int/1680093d9e

of luring or to the purpose of coercion a person to marriage abroad[25]. The term "luring into another state" is used in the text of the Istanbul Convention, Ukrainian legislator while implementing the provisions of this convention use another term – "inducement" for the purpose of transferring to the territory of another state than she/he lives. (Part 2 of Article 151-2 of the Criminal Code of Ukraine).

The term "inducement" means making someone want to do something; to force, incite, encourage to some action or a certain act[26]. The inducement of a person to move to the territory of another state than she/he lives for the purpose of coercion a person to marriage or coercion a person to continue forcibly entered marriage, as well as coercion a person to enter into cohabitation without marriage or coercion a person to continue such cohabitation, can actually be achieved through the use of violence, the threat of violence, and using deception. The provisions of Part 2 of Art. 37 of the Istanbul Convention "if by deception or in any other way affect on a person for making him/her leave the country of residence for the purpose of coercion to marriage" is transformed into legislative prescriptions of such foreign countries: Norway, Germany, Austria, Sweden, Switzerland, France, Spain, Montenegro, Serbia.

There is an opinion in juridical literature there that the inducement for the purpose of marriage or cohabitation to move to the territory of another state than the person lives, if such an act is committed in the form of transfer, with the purpose of exploitation, then it should be qualified according to art. 149 of the Criminal Code of Ukraine (in accordance with the comment to Article 149 of the Criminal Code of Ukraine, forced marriage is a form of exploitation)[27].

Pay attention to fact that recruiting, moving, hiding, transferring or receiving a person in accordance with Art. 149 of the Criminal Code of Ukraine must be committed for the purpose of exploitation by one of the following alternative methods: 1) using coercion, 2) abduction, 3) deception, 4) blackmail, 5) material or other dependence of the victim, 6) his/her vulnerable state or 7) bribing the third person controlling the

[25] Про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами: Конвенція Ради Європи Конвенція Ради Європи та Пояснювальна доповідь Стамбул (Туреччина) 11.05.2011 р. URL: rm.coe.int/1680093d9e

[26] Великий тлумачний словник сучасної української мови. Київ – Ірпінь : ВТФ «Перун», 2005. 1728 с.

[27] Васильєв А.А., Юртаєва К.В. Реалізація положень Стамбульської конвенції в законодавстві України про кримінальну відповідальність: системно -правовий аналіз внесених змін і доповнень. *Порівняльно-аналітичне право*. 2019. С. 283

victim to obtain consent for his exploitation. Regardless of the methods of recruitment, transfer, concealment, transfer or receipt, criminal liability is always occurs if such actions were towards a minor or under age child.

Forced marriage is already provided in the list of person exploitation types and covered by the concept "customs similar to slavery". Its definition is provided in accordance with Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Customs Similar to Slavery dated 07.09.1956. Forced marriage takes place if: 1) a woman is promised to marry or is being married, without her right to refuse, by her parents, guardian, family or any person or group of persons for a money reward or exchange for a product; 2) the woman's husband, his family or his clan transfer woman to another person for a fee or otherwise; or 3) a woman after the death of her husband is inherited by another person[28]. Therefore, in our opinion, it is unacceptable to put an equal sign between "exploitation" and "marriage" even forced. Person exploitation is primarily the use of a human resource. Forced marriage means the absence of mutual consent between persons, but not the possible further exploitation of human. As a result, it is extremely difficult to prove that person was moving abroad for forced marriage for the purpose of exploitation. Slavery-like customs associated with transfer of a woman without her consent to marriage, are indicated in the say above convention, it reflects the use of a person as a commodity, and that is the essence of the crime «Human traffic».

The delimitation from coercion person to marriage is in Article 151-2 of the Criminal Code on the grounds of an objective and subjective features: if the guilty person only consciously enforces the victim to enter into the marriage, then this act is qualified in accordance to art. 151-2 of the Criminal Code; if the victim is recruited by the guilty person for the purpose of forced marriage or in pursuance of customs similar to slavery, or transfers with the same purpose to another person (s), or received with the same purpose from another person (s), the act should be qualified in accordance to Article 149 of the Criminal Code. The simultaneous qualification of the act on both of these articles is excluded because of the principle *non bis in idem* (the principle of the inadmissibility of double incrimination), article 61 of the Constitution of Ukraine is also provided

[28] Про скасування рабства, работоргівлі та інститутів і звичаїв, подібних з рабством: Додаткова Конвенція від 07.09.1956. URL: https://zakon.rada.gov.ua/laws/show/995_160.

it[29]. Thus, the mentioned delimitations of the crimes provided in Articles 151-2 and 149 of the Criminal Code of Ukraine demonstrate that the main difference is that the actions are aimed at buying and selling the victim or as a "transfer-receipt" of the recruited person to others for forced marriage. We consider it's necessary to exclude from note 1 to Art. 149 of the Criminal Code, such a form of exploitation as "forced marriage", considering the existence of such a form of exploitation as pursuance "customs like slavery".

Coercion crime is considered complete from the moment of physical or mental violence is used, and in the fifth form – from the moment of the committing actions that characterize the inducement (the marriage does not have to be obligatory entered into)[30].

The subject of coercion to marriage is a physical, sane person who has reached the age of 16.

The subjective feature is characterized by direct intention. Considering that coercion and inducement by design are the formal components of a crime, thereafter the guilty person realized social dangerous of his actions (coercion, inducement), and wanted to commit it.

Every country established the age of marriage in law. The person who has not reached the age of marriage is a person who has not reached that age in accordance with the legislation of the country of her/his citizenship[31]. Such interpretation causes some contradictions. First, the state registration of marriage at the territory of Ukraine is carried out between a man and a woman who have reached the age of marriage – 18 years (Article 22 of the Family Code). There is an exception to the rule: at the request of a person who has reached the age of sixteen, by a court decision, she/he may be granted the right to marry if it is determined that this is in his/her interests. Secondly, a person under the age of 18 is considered a child. This provision is a postulate and correspond with the provisions of international treaties and is generally recognized in the world. So, to determine the age of marriage in accordance with the law of

[29] Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.103.

[30] Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.102.

[31] Дудоров О.О., Хавронюк М.І. Відповідальність за домашнє насильство і насильство за ознакою статі (науково-практичний коментар новел Кримінального кодексу України) / за ред. М. І. Хавронюка. К.: Ваіте, 2019. С.102.

the country of citizenship is not advisable, as far as marriage with a child (a person under 18 years old), regardless of citizenship, on the territory of Ukraine is unacceptable, except a special court decision for a single individual as an indication that marriage meets his/her interests.

Other qualifying features are given in part 2 of Article 151-2 of the Criminal Code of Ukraine: repeated crime or committing it with preliminary agreement of group, or committing it towards two or more persons. These features should be determined by using a systemic interpretation, guided by the provisions of Article 28, 32 of the Criminal Code of Ukraine.

CONCLUSIONS

Thus, taking into account conducting research, the following main conclusions were determined. On its preventive meaning, the criminal prohibition of coercion to marriage is aimed at changing the social and cultural patterns of behavior of men and women for eliminating prejudices, customs and all other occurrences, based on the idea of inferiority or superiority of one of the sexes or stereotyped roles of men and women.

The wording of Article 151-2 of the Criminal Code of Ukraine which establishing liability for coercion "to continue forced marriage, or enter the cohabitation without marriage, or to continue such cohabitation" is much broader than provided in the Istanbul Convention, which requires only criminalization of "coercion an adult or a child to marriage"[32].

The personal freedom of a individual should be declared as the main direct object of coercion to marriage. Guided by a definite structure of personal freedom, we see that coercion to marriage is an interference on the ability to act according to one's discretion and one's will and freedom to dispose oneself. The person's dignity, sexual freedom and sometimes sexual inviolability (if the person has not reached the age of 16), bodily and mental inviolability should be considered as a subsumer object of coercion to marriage.

The objective features of this crime is characterized by actions in the such forms: 1) coercion of a person to marriage; 2) coercion of a person to

[32] Висновок Головного науково-експертного управління на проект Закону України «Про внесення змін до деяких законів України у зв'язку з ратифікацією Конвенції Ради Європи про запобігання насильству стосовно жінок і домашньому насильству та боротьбу з цими явищами» від 14.11.2016 р. № 4952.http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648

continue a forcibly contracted marriage; 3) coercion a person to enter into cohabitation without marriage; 4) coercion a person to continue such cohabitation; 5) the inducement of a person to move to the another territory than it lives, with the purpose of marriage or cohabitation.

Coercion can be characterized as follows: 1) firstly, it is always against the will of the victim; 2) secondly, it is the influence on the human consciousness regarding his/her behavior, his/her doing or not doing of particular actions; 3) thirdly, coercion (in means of physical and mental violence) is used by the guilty person for manipulating victim and his choice, to act on his own will. Therefore, coercion can be committed by using violence or threatening to use it, or using blackmail.

The inducement of a person to move to the territory of another state than she/he lives, for the purpose of coercion a person to marriage or coercion a person to continue forcibly entered marriage, as well as coercion a person to enter into cohabitation without marriage or coercion a person to continue such cohabitation, can actually be achieved through the use of violence, the threat of violence, and using deception.

The crime is considered to have been completed from the moment of committing actions, that is covered by the concept of “coercion of a person” or “inducement of a person”. That is, coercion is considered to be completed from the moment of the using physical or mental violence (including blackmail) on the victim, regardless of its effectiveness (regardless of whether the marriage registered or not, the person entered into a relationship of cohabitation or not). Inducement is considered to be completed from the moment of using violence, the threat of violence, and using deception.

We consider it’s necessary to exclude from note 1 to Art. 149 of the Criminal Code, such a form of exploitation as “forced marriage”, considering the existence of such a form of exploitation as pursuance “customs like slavery”.

The subject of coercion to marriage is a physical, sane person who has reached the age of 16.

The subjective feature is characterized by direct intention. Considering that coercion and inducement by design are the formal components of a crime, thereafter the guilty person must have realized social dangerous of his actions (coercion, inducement), and wanted to commit it.

The person who has not reached the age of marriage according to the current legislation (qualifying feature), is a person who has not reached that age 18 years and if the person lives on the territory of Ukraine (in accordance with the legislation of Ukraine).

The legislative provision in part 4 of Art. 56 of the Family Code of Ukraine needs changes and should be in the following wording: "Coercion to stop the marriage relationship, coercion to preserve it, including coercion to have sexual intercourse through physical or mental violence, is a violation of wife's/husband's the right on liberty and security of person and must have consequences defined by law".

SUMMARY

The reasoned conclusions of scholars and practitioners on the criminalization of "Coercion to marriage" (Article 151-2 of the Criminal Code of Ukraine) are analyzed in the paper. The interpretation of objective and subjective features of the crime "Coercion to marry" has been carried out, attention has been focused on the delimitation of the crime with the correlated crimes. The controversial provisions of the criminal law characteristics of this crime's formal components in the juridical literature are determined. On the basis of a systematic interpretation of the legislation, it was proposed perfection of the provisions of Ukrainian criminal legislation.

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Information about the authors:
Syngaivska I. V.
Candidate of Juridical Sciences, Docent,
Associate Professor at the Department of Special-Legal Disciplines
of the V. I. Vernadsky Taurida National University
33, Ivana Kudri str., Kyiv, 02000, Ukraine

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GUARANTEEING AND PROTECTING HUMAN RIGHTS AND FREEDOMS IN UKRAINE

Fedorenko V. L.

The publication is accustomed to the actual problems of the theory and practice of guaranteeing and protecting fundamental human rights and freedoms in Ukraine, taking into account the positive experience of human rights protection in the member states of the EU, USA and other countries of the world. It is noted that today the issue of approving, guaranteeing and protecting human rights and freedoms remains a key paradigm of law and an indicator of the effectiveness of the rule of law in a particular state.

For the newest Ukraine, the most dramatic have been the consequences of the mass violation of the fundamental human right to life and other constitutional rights (political, economic, social, cultural, religious and information, *etc.)* in the annexed Autonomous Republic of Crimea and the East of Ukraine during 2014-2019. So the UN in the beginning of 2019 officially increased its estimate of the number of victims of the war in the east of Ukraine to 13,000.

In this sense, the rights, freedoms and rights enshrined in the constitutions are important for a person, a society and a state in Ukraine, but also an effective guarantee of their implementation as implementation, use and observance. Achieving this goal involves combining the efforts of the state and civil society for the proper establishment, guaranteeing and protecting human rights and citizens in accordance with international standards in the field of human rights protection.

The article substantiates the position that the guarantees of constitutional human rights and freedoms and the protection of constitutional rights and freedoms are related, but not identical categories. If the guarantees of constitutional rights and freedoms of man are, first of all, is a system of conditions and means for the effective realization of human rights and freedoms, then their protection is an independent form of legal activity, the content of which is the purposeful and systemic activity of the person, society and the state with regard to extrajudicial and

judicial protection and the restoration of already violated constitutional rights and freedoms.

It is determined that under the guarantees of constitutional rights and freedoms should be understood the system of conditions and means, legal mechanisms for ensuring the proper realization of the rights and freedoms of man and citizen determined by the Constitution and laws of Ukraine. At the same time, the system of guarantees of constitutional rights and freedoms in Ukraine is represented by general and special (legal) guarantees.

In its turn, the general guarantees of human rights and freedoms are determined by the level of development of the main spheres of social and public life like political, economic, social, cultural (spiritual), informational and ecological, *etc*. Special, legal guarantees of constitutional rights and freedoms in Ukraine are represented, first of all, by legal and regulatory (legislative) and organizational and legal (institutional) mechanisms of realization of these rights and freedoms interconnected among themselves. The specified general and special guarantees do not work effectively alone without the others.

It is emphasized that the organizational and legal (institutional) guarantees of human rights and freedoms in Ukraine are represented by the system of the main subjects of constitutional law, which covers the followings: (1) the people of Ukraine; (2) territorial communities; (3) bodies of state power and bodies of local self-government, their officials and officers; (4) political parties; (6) civil society and its institutions; and (7) citizens of Ukraine and others. These subjects of constitutional law are authorized in their activities to establish and guarantee constitutional rights and freedoms everywhere.

Unlike guarantees, the protection of constitutional rights and freedoms of a person and a citizen is an independent form of purposeful legal activity and a process of human rights protection, which is carried out by specially authorized subjects in judicial and extrajudicial way at the national and international level. The main kind of protection of constitutional rights and freedoms in Ukraine and abroad is theirs *judicial protection*. According to Art. 55 of the Constitution of Ukraine judicial protection of human and civil rights and freedoms is carried out by the system of courts of general jurisdiction of Ukraine. The state guarantees every person the right to appeal in court decisions, actions or inactivity of

state authorities, local self-government bodies, officials and officers who violate the rights and freedoms of man and citizen.

In addition to the judicial protection of constitutional rights and freedoms, an extensive system of their extra-judicial protection is operating in Ukraine through bodies of state power and bodies of local self-government, their officials, as well as through civil society institutes. Thus, according to the Basic Law, the Verkhovna Rada of Ukraine has exclusive powers to regulate the rights and freedoms of citizens and guarantee their implementation (Art. 92); the President of Ukraine is the guarantor of the rights and freedoms of man and citizen (Art. 102); and the Cabinet of Ministers of Ukraine takes measures to ensure the rights and freedoms of man and citizen (Art.116) and involves a system of executive bodies.

Ukraine also has a system of specially authorized state agencies to carry out human rights activities of the subjects: the Ukrainian Parliament Commissioner for Human Rights and the system of specialized 'ombudsmen' formed under the head of state and government as follows: (1) the Authorized President of Ukraine on the rights of the child; (2) Commissioner of the President of Ukraine of the Crimean Tatar people; (3) Commissioner of the President of Ukraine on the rights of people with disabilities; 4) Commissioner of the President of Ukraine of rehabilitation of participants of the Antiterrorist Operation (ATO) who received injuries, contusions, injuries or other illnesses during participation in the Antiterrorist Operation; (5) Government Commissioner for European Court of Human Rights; 6) Governmental Commissioner for Gender Policy; (7) Governmental Commissioner for People with Disabilities; and (8) Council of the Business Ombudsman under the Cabinet of Ministers of Ukraine and others.

In addition to the state, the institutions of civil society play an important role in protecting constitutional rights and freedoms. First and foremost, domestic and international human rights organizations.

1. Constitutional Rights and Freedoms of Man as a Universal Value that needs Effective Protection

It is generally acknowledged that human rights and freedoms are one of the most important values for societies and states around the world. It was these human rights and freedoms that became the main motto of the

first revolution in the end of 18th-19th centuries and after their victory became the heart of the White and the declarations of human rights, constitutions and constitutional acts initially states of Europe and America, Japan, and in the future and other parts of the world[1].

Most of the founders of classical American and European constitutionalism drew attention to the significant impact of human rights and freedoms on the law as a whole. So, the famous American thinker A. de Tocqueville wrote about human rights the following:

'*The noblest notion of virtue is the concept of rights. Suffice it to say, both of these concepts are interconnected: rights are nothing but virtues transposed into political life*'[2].

Today, like two or three centuries ago, the issue of the establishment, guaranteeing and protecting human rights and freedoms remains a key paradigm of law and an indicator of the effectiveness of the rule of law in a particular state. It is obvious that not only the scope of the rights and freedoms enshrined in the constitutions is important to man, society and state, but the reality of their implementation: implementation, use and observance. In this sense, the Charter of Fundamental Rights of the European Union (2000) in its Preamble consolidated the following relevant provisions:

'The European Union promotes the preservation and development of common values while respecting the diversity of cultures and traditions of the peoples of Europe... it seeks to promote balanced and steady development and ensures the free movement of persons, goods, services and capital, as well as freedom of establishment of business entities. To this end, it should be by giving them the Charter greater certainty, strengthening the protection of fundamental rights, taking into account the evolution of society, social progress, the development of science and technology'[3].

Thus, the Charter of Fundamental Rights of the European Union emphasizes the need, on the one hand, to strengthen the normative definition of human rights and freedoms, on the other hand, to strengthen mechanisms for the protection of these rights and freedoms, taking into account the achievements of social progress, and science and technology.

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[1] Федоренко В.Л. Конституціоналізм і революції / В.Л. Федоренко // Право України. – 2018. – № 4. – С. 73.

[2] Токвіль А. де. Про демократію в Америці. У двох томах / А. де Токвіль ; пер. з фр. Г. Філіпчука та М. Москаленка : передм. А. Жардена. – К. : Вид. дім «Всесвіт», 1999. – С. 198.

[3] Хартия основных прав Европейского Союза. [Електронний ресурс]. – Режим доступу : http: zakon5.rada.gov.ua/laws/show/994_524 – назва з екрана.

This will allow you to focus the efforts of the societies and member states of the EU and other European states to protect primarily fundamental human rights and freedoms and to abandon irrational ‘competitions’ for the formal expansion of the nomenclature and the scope of positive human rights in the 21st century that states cannot guarantee and protect at the present stage of their development.

Such an approach to the establishment and protection of fundamental rights and freedoms in the EU is also relevant today. After all, the migration crisis and the mixed consequences of the policy of multiculturalism in the last 10 years in the European Union have aggravated the problem of the ability of states to effectively ensure the rights of people to a decent material standard of living, work and leisure, social protection and a number of others.

It is obvious that the approval and implementation of constitutional rights and freedoms in the 21st century depends on the perfection of the general social and legal mechanisms of their guarantee and protection. The relevant issues, given the 2014 Independence Revolution and its subsequent annexation of the Crimea and the fighting in the East of Ukraine in 2014-2019, today are relevant for our state. After all, ensuring the realization, guaranteeing and protecting human rights and freedoms for the relevant tasks is not only an important but also a complex task for the state, civil society and human rights activists, including international profile organizations.

Thus, one of the fundamental values of the Revolution of Dignity, from which its name derives, has become dignity, which is recognized as the core of the system of human rights and freedoms in all democratic states. Fixed in Art. 1 of the Universal Declaration of Human Rights (1948), the provision that stipulates the following: ‘All men are born free and equal in their dignity and rights’[4] according to S. Holovatyi, confirmed the *‘concept of humanity as a synthesis of ideas and values that are direct sprouts of the great ideas of the age of Enlightenment and the famous practical achievements of the American and French Revolutions*’[5].

Violations of human dignity have become the prerequisite for many revolutions in the world, beginning with the Glory Revolution in 1688 in England and before the revolutions of the 21st century, including the Revolution of Dignity. As you know, on November 30, 2013, during the

[4] 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.

[5] Головатий С. Про людські права. Лекції / С. Головатий. – К. : Дух і літера, 2016. – С. 433.

forceful dispersal of the Euro-Maidan revolution, the special forces of the Berkut militia (Police) roughly violated the guaranteed in Art. 3 of the Basic Law the right of protesters to dignity. Then, for the second time in the 21st century, after the Orange Revolution, Ukrainians resorted to the effective public defence of their human dignity and other fundamental human rights and freedoms. However, the price of the victory of the Revolution of Dignity was too high.

The Commissioner of the Verkhovna Rada of Ukraine for Human Rights, in his annual report on the state of observance of human rights and freedoms in Ukraine, noted that during the Revolution of dignity in the period from January 1 to February 22, 2014, 105 people died in Kyiv due to events in the Independence Square in Kyiv (of them 94 people during clashes on Instytutska Street). The overwhelming number of fatal cases was associated with the acquisition of firearms[6].

In the future, the annexation of the Autonomous Republic of Crimea and the temporary occupation of certain districts of Donetsk and Luhansk Oblasts (regions), the ATO, massive forced internal migration of Ukrainians (internally displaced persons), as well as the large-scale military-political, socio-economic and humanitarian crisis in 2014-2019, are made to be critical rethink existing safeguards and mechanisms for the protection of constitutional rights and freedoms in Ukraine, which the author has already written earlier[7].

But the most severe have been the consequences of mass violations of the fundamental human right to life in the East of Ukraine during 2014-2019. So the UN in the beginning of 2019 officially increased its estimate of the number of victims of the war in the East of Ukraine to 13,000. Of these, a quarter is civilians, and more than 30,000 are injured. This figure also includes 298 Boeing passengers on the MH17 Flight of the *Malaysia Airlines*, which was shot down on July 17, 2014 in the sky over the Donbas on the way from Amsterdam to Kuala Lumpur. This was reported

[6] Щорічна доповідь Уповноваженого Верховної Ради України з прав людини про стан додержання та захисту прав і свобод людини і громадянина в Україні. – К., 2015. – С. 9-13.

[7] Федоренко В.Л. Конституційне право України : підручник ; До 20-ої річниці Конституції України та 25-ої річниці незалежності України / В.Л. Федоренко. – К. : Вид-во «Ліра», 2016. – С. 258; Fedorenko W. Efektywność ochrony praw i wolności człowieka w Ukrainie: historia, współczesność, perspektywy / W. Fedorenko // Uniwersalny i regionalny wymiar ochrony praw człowieka. Nowe wyzwania – nowe rozwiązania. – T. 3. – Warszawa: Wydawnictwo Sejmowe, 2014. – S. 803-806.; Fedorenko W. Problem ochrony praw człowieka w warunkach rewolucji oraz konfliktów wojennych / W. Fedorenko // Ochrona praw człowieka w wymiarze uniwersalnym. Akcjologia – instytucje – nowe wyzwania – praktyka. Red. naukowa J. Jaskiernia, K. Sprzyszak. – Toruń: Wydawnictwo Adam Marszałek, 2017. – S. 73-79

by the Office of the United Nations High Commissioner for Human Rights in a document dated February 25, 2019[8].

However, violation of the right to life, human dignity and other personal rights and freedoms of people in Crimea and East of Ukraine in 2014-2019 does not exclude violations of other political, economic, social, cultural, and information rights and freedoms. For several years in a row, in the annual report of the Ukrainian Parliament Commissioner (Ombudsperson) for Human Rights on the state of observance and protection of human and civil rights and freedoms in Ukraine, the first and, accordingly, the priority section is the section on the observance of the rights and freedoms of internally displaced persons and persons living in the temporarily occupied territory. First of all, this report refers to the right to receive payments and benefits guaranteed by the state, property rights and legal personality, suffrage, right to freedom of movement, and access to education, *etc.*[9]

In connection with the situation described in the field of fundamental human rights and freedoms in Ukraine, the issue of guaranteeing and protecting constitutional rights and freedoms in Ukraine becomes of paramount importance for constitutional doctrine, law-making and law-enforcement practice. Obviously, under Ukraine cannot abandon its international obligations in the field of human rights and freedoms and unilaterally reduce the range of guaranteed human rights and freedoms under any circumstances. Consequently, the only constructive way to resolve this problem is to strengthen safeguards and to improve mechanisms for the protection of constitutional rights and freedoms, taking into account the positive experience of the states of Europe (Poland, Romania, Croatia and Montenegro, *etc.*) who survived the revolution and military conflicts.

The theoretical and methodological foundations of guaranteeing and protecting constitutional rights and freedoms demand for their rethinking. Most Ukrainian lawyers believe that an important element of the constitutional and legal status of a person and a citizen is the guarantees of these rights and freedoms[10], or their provision[11] or protection as a *'concept*

[8] 13 тисяч: офіційні дані ООН щодо загиблих у війні на Донбасі / Радіо Свобода. [Електронний ресурс]. – Режим доступу : https://www.radiosvoboda.org/a/29792144.html – назва з екрану.

[9] Щорічна доповідь Уповноваженого Верховної Ради України з прав людини про стан додержання та захисту прав і свобод людини і громадяина в Україні. – К. : Вид.– поліграф. центр «Київськ. ун-т», 2018. – С. 10-26.

[10] Заворотченко Т. М. Конституційно-правові гарантії прав і свобод людини і громадянина в Україні: Автореф. дис. … канд. юрид. наук. – К., 2002. – 19 с.

of human rights'[12] and offer their own scientific approaches to their definition. The most traditional, though not exhaustive, for the science of constitutional law, remains the category of *'guarantees of constitutional rights and freedoms'* for today.

The guarantees of constitutional human rights and freedoms and the protection of constitutional rights and freedoms are related, but not identical categories. If the guarantees of constitutional rights and freedoms of man are, first of all, is a system of conditions and means for the effective realization of human rights and freedoms, then their protection is an independent form of legal activity, the content of which is the purposeful and systemic activity of the person, society and the state with regard to extrajudicial and judicial protection and the restoration of already violated constitutional rights and freedoms. That is, the guarantees of human rights and freedoms are the conditions for their approval and implementation, and protection is the activity to restore these rights and freedoms.

At the same time, guaranteeing and protecting human rights and freedoms are complementary phenomena. Consider them as mutually determined phenomena of constitutional and legal being.

2. Guarantees of Constitutional Rights and Freedoms in Ukraine: Concept, Content and System

It is determined that under the guarantees of constitutional rights and freedoms should be understood the system of conditions and means, legal mechanisms for ensuring the proper realization of the rights and freedoms of man and citizen determined by the Constitution and laws of Ukraine.

At the same time, the system of guarantees of constitutional rights and freedoms in Ukraine is represented by general and special (legal) guarantees. *In its turn, the general guarantees of human rights and freedoms are determined by the level of development of the main spheres of social and public life like political, economic, social, cultural (spiritual), and informational and ecological, etc.*[13]

Political guarantees of constitutional rights and freedoms include, first and foremost, such major political institutions as the Institute of

[11] Пушкіна О. В. Конституційний механізм забезпечення прав людини і громадянина в Україні: проблеми теорії і практики: Автореф. дис. … док. юрид. наук. – Х., 2008. – 48 с.

[12] Корнієнко П.С. Конституційні основи правозахисної діяльності в Україні : монограф. / П.С. Корнієнко. – К. : Видавництво Ліра-К, 2018. – 360.

[13] Федоренко В.Л. Конституційне право України : підручник ; До 20-ої річниці Конституції України та 25-ої річниці незалежності України / В.Л. Федоренко. – К. : Вид-во «Ліра», 2016. – С. 260.

People's Sovereignty, forms of direct democracy, political and ideological pluralism, and multi-party system, etc. Equally important political guarantee of guarantees of human rights and freedoms is the development of civil society and its institutions, the growth of 'social capital' and the expansion of social human rights networks, the development of participative democracy and the parity of civil society and state cooperation in the human rights sphere.

Economic guarantees of constitutional rights and freedoms are represented by property institutions, economic pluralism, freedom and security of entrepreneurial and economic activity, etc. It is well-known that property generates and, at the same time, guarantees the fundamental rights and freedoms of man. It is significant that in the 19th century in the states of Western Europe and the United States, citizens who did not have private property and did not pay taxes were limited to individual rights. The same development and protection by the state and society of all forms of ownership is an important condition for the construction of a 'society of owners', in which everyone understands and recognizes the limits of their own rights and freedoms[14].

Social guarantees of constitutional rights and freedoms presuppose the existence of a developed social, but not populist and not paternalistic state. The socially responsible state must firmly provide its citizens, all the people who are legally in its territory with the opportunity to dignify the results of their work, as well as enjoy social protection of the state, due to objective circumstances as disability, retirement, temporary loss of ability to work, forced displacement within the state, *etc.*

Cultural (spiritual) guarantees of constitutional rights and freedoms are expressed in the presence of effective mechanisms for supporting the development of national culture and national minority culture. Equally important, the spiritual guarantee is respect for fundamental human rights and freedoms, both to the traditional spiritual values of civil society and every single person.

There are other types of general guarantees of constitutional rights and freedoms of man and citizen in Ukraine. Thus, in recent years in Ukraine, open and unbiased information on the essence and content of such rights, forms and methods of their realization, as well as guarantees and methods of protection, is of great importance for the consolidation of

[14] Федоренко В.Л. Конституційне право України : підручник ; До 20-ої річниці Конституції України та 25-ої річниці незалежності України / В.Л. Федоренко. – К. : Вид-во «Ліра», 2016. – С. 260.

human rights and freedoms. In this context, the National Educational Human Rights Project of the Ministry of Justice of Ukraine deserves attention: *'I have a right! I know! I act! I protect!'*[15].

In addition, the annual reports of the Ukrainian Parliament Commissioner for Human Rights on compliance with constitutional rights and freedoms, as well as the results of monitoring of the state of human rights and freedoms in Ukraine carried out by civil society institutions, allow one to resist the 'hybrid war' which is a thesis about the not-soiled mythical 'massive violations of human rights by the state bodies in Ukraine' and, at the same time, to analyse the weak links of human rights activism in Ukraine, find ways to strengthen and upgrade them.

The general guarantees of the constitutional rights and freedoms of a person have a significant impact on their implementation, since they confirm the readiness of man, society and state to realize the rights and freedoms. Any, even the most perfect legal mechanism for the implementation of constitutional rights and freedoms is powerless, provided the low level of political and socio-economic development of civil society and the state, the absence of established traditions of legal culture, and intolerance to corruption, *etc.*

At the same time, general guarantees cannot replace or replace the conditions created by law for optimal realization of human rights and freedoms. After all, it is the Constitution and laws of Ukraine that give us the most complete, though not exhaustive, idea of the content and scope of human rights and freedoms, mechanisms and procedures for their implementation and protection, as well as determine the system of entities authorized to ensure their approval and guarantee: from the state to such reputable international organizations as the United Nations (UN).

Special, legal guarantees of constitutional rights and freedoms in Ukraine are represented, first of all, by legal and regulatory (legislative) and organizational and legal (institutional) mechanisms of realization of these rights and freedoms interconnected among themselves.

Legal and regulatory guarantees of the basic rights and freedoms of man and citizen are represented by a system of norms of constitutional law, which establish and fix the basic rights and freedoms, define the principles, forms, methods, mechanisms and procedures for their implementation. These guarantees are objectively reflected in the system

[15] «Я маю право!» / офіційний веб-сайт Міністерства юстиції України. [Електронний ресурс]. – Режим доступу : https://pravo.minjust.gov.ua/ua – назва з екрану.

of current legislation of Ukraine in the field of human and civil rights and freedoms, namely, in the Constitution of Ukraine, the laws of Ukraine, and other acts of the current legislation[16].

Thus, the Constitution of Ukraine establishes general principles of legal and regulatory guarantees. In particular, Art. 57 of the Basic Law determines that laws and other legal and regulatory acts defining the rights of citizens must be brought to the attention of the population in accordance with the procedure established by law. Otherwise, such legal and regulatory acts are not valid[17].

At the same time, the constitutional rights and freedoms of man and citizen, according to Art. 64 of the Basic Law, stipulated by Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and 63, may not be restricted except in cases where stipulated by the Constitution of Ukraine[18]. Separate restrictions of rights and freedoms, indicating the validity of these restrictions, may be established solely in conditions of martial law or state of emergency. At the same time, Ukraine remains a state that, even under conditions of aggression 2014-2019, ensures the realization of the overwhelming majority of constitutional rights and freedoms, even those whose restrictions are allowed by the Constitution of Ukraine.

Despite the fact that the norms of the Constitution of Ukraine are rules of direct action, and the rights and freedoms of people, which are enshrined in the Basic Law, can be appealed in courts, the legislator in paragraph 1 of part one of Art. 92 of the Constitution of Ukraine has determined that human rights and freedoms and their guarantees are determined exclusively by the laws of Ukraine[19]. At the same time, a significant number of human and civil rights and freedoms have not received their development in special laws (the right to peaceful assembly), some laws that regulate the exercise of constitutional rights of citizens have ceased to exist for the 23 years since the adoption of the Constitution of Ukraine. For example, the legislation on all-Ukrainian and local referenda.

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[16] Федоренко В.Л. Конституційне право України : підручник ; До 20-ої річниці Конституції України та 25-ої річниці незалежності України / В.Л. Федоренко. – К. : Вид-во «Ліра», 2016. – С. 261.

[17] Конституція України : прийнята на п’ятій сесії Верховної Ради України 28 червня 1996 року // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

[18] Конституція України : прийнята на п’ятій сесії Верховної Ради України 28 червня 1996 року // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

[19] Конституція України : прийнята на п’ятій сесії Верховної Ради України 28 червня 1996 року // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

Prior to World War II, the protection of human rights and freedoms was seen primarily as a matter of domestic national policy. However, already the preamble to the UN Charter of 1945 has shown the joint determination of the signatory states *'... to reaffirm faith in fundamental human rights, the dignity and value of the human person ...'*[20].

Since then, in addition to the acts of the current legislation, international convention mechanisms play an exceptionally important role in guaranteeing fundamental human rights and freedoms. Such guarantees today are represented by a system of international treaties, agreements and framework conventions in the field of the establishment and protection of fundamental human and civil rights and freedoms. The main universal international acts in this area include the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, the International Convention on the Elimination of All Forms of Discrimination against Women of 1979, the UN Convention on the Rights of the Child of 1989, the Paris Climatic Agreement, adopted December 12, 2015, replacing the Kyoto Protocol, ratified by Ukraine in June 2016, *etc.*[21] [22] [23] [24] [25] [26] [27]

[20] Стаття 8 Конвенції про захист прав людини і основоположних свобод: стандарти застосування при здійсненні правосуддя / Н. Ахтирська, В. Філатов, Т. Фулей, Х. Хембах. – К. : Істина, 2011. – С. 8.

[21] Конвенція про захист прав людини і основоположних свобод від 4 листопада 1950 року : ратифікована Законом України від 17 липня 1997 року № 475/97-ВР разом з першим протоколом та протоколами № 2, 4, 7 та 11 // Відомості Верховної Ради України. – 1997. – № 40. – Ст. 263.

[22] Міжнародний пакт про громадянські і політичні права від 16 грудня 1966 року : ратифікований Указом Президії Верховної Ради УРСР від 19 грудня 1973 року № 2148-VIII (з двома факультативними протоколами) // Международные акты о правах человека. Сборник документов. – М. : НОРМА-ИНФРА-М, 1998. – С. 53-76.

[23] 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.

[24] Міжнародна конвенція про ліквідацію усіх форм расової дискримінації від 7 березня 1966 року : ратифікована Президією Верховної Ради Української РСР 21 січня 1969 року // Международные акты о правах человека. Сборник документов. – М. : НОРМА-ИНФРА-М, 1998. – С. 138-148.

[25] Конвенція про ліквідацію всіх форм дискримінації жінок від 18 грудня 1979 року : ратифікована УРСР 24 грудня 1980 року (із застереженням) // Международные акты о правах человека. Сборник документов. – М. : НОРМА-ИНФРА-М, 1998. – С. 266-280.

[26] Конвенція про права дитини : 20 листопада 1989 року (редакція зі змінами, схваленими резолюцією 50/155 Генеральної Асамблеї ООН від 21 грудня 1995 року) // Зібрання чинних міжнародних договорів України. – 1990. – № 1. – Ст. 205.

[27] Паризька кліматична угода, прийнята 12 грудня 2015 р. // Відомості Верховної Ради України. – 2016. – № 35. – Ст. 595.

Regional conventions have a significant influence on the development of human rights and freedoms. For example, for Ukraine and EU member states of the EU, such a convention is today the Charter of Fundamental Rights of the European Union of 2000[28]. In the context of Ukraine's implementation of the Association Agreement with the EU, enacted in 2016, this international human rights document will be projected to form the senses and trends of guaranteeing and protecting human rights and freedoms in Ukraine.

Organizational and legal (institutional) guarantees of human rights and freedoms are represented by the system of the main subjects of constitutional law, which covers: (1) the people of Ukraine; (2) territorial communities; (3) bodies of state power and bodies of local self-government, their officials and officers; (4) political parties; (6) civil society and its institutions; and (7) citizens of Ukraine and others[29]. The subjects of constitutional law mentioned above are authorized in their statutory activities (except for people and territorial communities) to establish and guarantee constitutional rights and freedoms everywhere.

Among the mentioned subjects of guaranteeing constitutional rights and freedoms in Ukraine, civil society and its institutions are becoming more and more important. First of all, it's about human rights organizations.

In turn, part 2 of Art. 57 of the Constitution of Ukraine stipulates:

'*Laws and other normative legal acts defining the rights and freedoms of citizens must be brought to the jurisdiction of the population in accordance with the procedure established by law*'[30].

Obviously, the subjects that prove to people their rights and freedoms, and such mechanisms and methods of their implementation are, first of all, public authorities and local self-government bodies, and their officials. At the same time, civil society institutions are such entities. First of all, there are human rights NGOs.

The substantiated system of guarantees of constitutional rights and freedoms in Ukraine is not flawless. This was also due to numerous violations of human rights and freedoms during the Revolution of Dignity and the conduct of the ATO (now the Joint Forces Operation (JFO)) in

[28] Хартия основных прав Европейского Союза. [Електронний ресурс]. – Режим доступу : http: zakon5.rada.gov.ua/laws/show/994_524 – назва з екрана.

[29] Федоренко В.Л. Конституційне право України : підручник ; До 20-ої річниці Конституції України та 25-ої річниці незалежності України / В.Л. Федоренко. – К. : Вид-во «Ліра», 2016. – С. 262.

[30] Конституція України : прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 року // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

2014-2019. But, in peacetime, such delusions are no exception for Ukraine. This, in particular, is evidenced by the steady and stable stay of Ukraine in the last 10-15 years in the first 5 States of the Council of Europe in terms of the number of citizens' complaints to the European Court of Human Rights.

Therefore, guarantees of constitutional rights and freedoms in Ukraine, as in most countries of the world, are combined with mechanisms for their protection and renewal. For Ukraine, issues of human rights protection remain relevant.

3. Protection of Constitutional Rights and Freedoms in Ukraine: Judicial and Extrajudicial Mechanisms

Protection of constitutional rights and freedoms of a person and a citizen is an independent form of purposeful legal activity and a process of human rights protection, which is carried out by specially authorized subjects in court and extrajudicial mode at the national and international level[31].

The main kind of protection of constitutional rights and freedoms in the world is theirs *judicial protection*. According to Art. 55 of the Constitution of Ukraine judicial protection of human and civil rights and freedoms is carried out by the system of courts of general jurisdiction of Ukraine. The state guarantees every person the right to appeal in court decisions, actions or inactivity of state authorities, local self-government bodies, officials and officers who violate the rights and freedoms of man and citizen.

In the case of the use of all domestic remedies for his rights and freedoms, a person may apply to international judicial authorities, for example, to the European Court of Human Rights (ECHR). As already noted Ukraine retains dubious leadership in Europe over claims and lost cases in the ECHR.

Judicial reform, initiated with the adoption by the Verkhovna Rada of Ukraine on June 2, 2016 of the Law of Ukraine *„On Amendments to the Constitution of Ukraine (on Judicial Proceedings)"*, changed not only the system of courts of general jurisdiction, but also the constitutional and legal status of the advocacy. Today, part two of Art. 131-2 of the Basic Law guarantees the independence of lawyers, and part four of the same

[31] Федоренко В.Л. Конституційне право України : підручник ; До 20-ої річниці Конституції України та 25-ої річниці незалежності України / В.Л. Федоренко. – К. : Вид-во «Ліра», 2016. – С. 263.

article establishes that '*the lawyer exclusively represents the other person in court, as well as protection from criminal charges*'[32].

The strengthening of the powers of the Institute of Advocacy in Ukraine in 2016-2019 as a whole contributed to improving the mechanism for the protection of constitutional rights and freedoms. At the same time, this constitutional narrative and its reflection in the current Law of Ukraine *"On Advocacy and Advocacy"*[33] gave rise to the phenomenon of the 'lawyer's monopoly' in Ukraine, when the representation of physical and legal in courts became exclusive competence of lawyers and, in essence, limited the guaranteed in Art. 55 of the Constitution of Ukraine the right to judicial protection of a person's rights.

The practice of enforcement of judgments in the human rights sphere, which has been repeatedly emphasized in the decisions of the European Court of Human Rights on claims of citizens of Ukraine, continues to be ambiguous. So, at one time, the decision of the European Court of Human Rights on the Yurii Mykholaiovych Ivanov vs. Ukraine Case, the system of execution by the Ukrainian state of judgments in the field of human rights was extremely negative. In response to this decision, the Ministry of Justice developed a bill, and the Verkhovna Rada of Ukraine adopted the Law of Ukraine *"On State Guarantees for the Implementation of Court Decisions"*, which came into force on January 1, 2013[34].

The provisions of the Law of Ukraine *„On State Guarantees for Enforcement of Court Decisions"* break the pre-established practice in which the decision of the courts, primarily on the collection of funds, was often carried out with considerable delay due to the lack of a legal mechanism for the compulsory collection of funds from the state, its organs, enterprises, institutions and organizations. Now the article. 2 of this Law stipulates that the Ukrainian state guarantees execution of a court decision on collection of funds and an obligation to perform certain actions concerning property, the debtor of which is: a state body; state enterprise, institution, organization; legal entity, the forced realization of which property is prohibited in accordance with the law.

[32] Про внесення змін до Конституції України (щодо правосуддя) : Закон України від 2 червня 2016 р. // Голос України. – 2016. – № 118 (від 29.06.2016).

[33] Про адвокатуру та адвокатську діяльність : Закон України від 5 липня 2012 р. // Відомості Верховної Ради України. – 2014. – № 50-51. – Ст. 2057.

[34] Про гарантії держави щодо виконання рішень суду: Закон України від 5 червня 2012 р. // Офіційний вісник України. – 2012. – №. 49. – Ст. 1919.

In addition to the judicial protection of constitutional rights and freedoms, an extensive system of their extra-judicial protection is operating in Ukraine through bodies of state power and bodies of local self-government, their officials, as well as through civil society institutes. Thus, according to the Basic Law, the Verkhovna Rada of Ukraine has exclusive powers to regulate the rights and freedoms of citizens and guarantee their implementation (Art. 92); The President of Ukraine is the guarantor of the rights and freedoms of man and citizen (Art. 102); The Cabinet of Ministers of Ukraine takes measures to ensure the rights and freedoms of man and citizen (Art. 116) and involves a system of executive bodies[35] [36].

The protection of human rights and freedoms is also determined by the priority tasks of law-enforcement bodies in Ukraine. Thus, item 2 of the first part of Art. 2 of the Law of Ukraine *"On National Police"* defines the main task of the National Police is 'the protection of human rights and freedoms'[37]. Similar provisions are found in most provisions of the ministries and other central executive bodies. Protection of human rights and freedoms also serves as a priority both in the activities of local self-government bodies and their officials.

In Ukraine, there is also a system of specially authorized state agencies for the implementation of human rights activities of entities. In addition to the institution of the Ombudsperson of the Verkhovna Rada of Ukraine on Human Rights, the procedure of which is determined by the Law *„On the Commissioner of the Verkhovna Rada of Ukraine on Human Rights"* dated December 23, 1997, the system of specialized 'ombudsmen' established under the head of state and government is also in force:[38]

- Commissioner of the President of Ukraine on the rights of the child;
- Commissioner of the President of Ukraine on affairs of the Crimean Tatar people;

[35] Конституція України : прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 року // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

[36] Корнієнко П.С. Конституційні основи правозахисної діяльності в Україні : монограф. / П.С. Корнієнко. – К. : Видавництво Ліра-К, 2018. – С. 303.

[37] Про Національну поліцію : Закон України від 2 липня 2015 р. // Відомості Верховної Ради України. – 2015. – № 40-41. – Ст. 379.

[38] Про Уповноваженого Верховної Ради України з прав людини» від 23 грудня 1997 р. // Відомості Верховної Ради України. – 1998. – № 20. – Ст. 99.

- Commissioner of the President of Ukraine on the rights of people with disabilities;
- Commissioner of the President of Ukraine on rehabilitation of participants of the antiterrorist operation who has been injured, contused, injured or other illnesses during participation in the antiterrorist operation;
- Government Commissioner for European Court of Human Rights;
- Governmental Commissioner for Gender Policy;
- Governmental Commissioner for People with Disabilities; and
- Council of the Business Ombudsman under the Cabinet of Ministers of Ukraine, and others.

The strengthening of the ombudsman system in Ukraine by the presidential and governmental authorities is, on the one hand, a positive step towards the specialization of human rights protection, and on the other, it creates competition for competences and leads to the dispersal of the forces and resources of these human rights activists.

In addition to the state, the institutions of civil society play an important role in protecting constitutional rights and freedoms. In particular, such human rights organizations as: the Ukrainian Human Rights Union, the Kharkiv Human Rights Protection Group, the Donetsk Memorial, the Coalition Against Discrimination in Ukraine, LA STRADA-UKRAINE International Women's Rights Centre, the Coalition for the Rights of the Child, the Centre for Civil Liberties, THE REGIONAL CENTER FOR HUMAN RIGHTS Civil Society, THE RIGHT TO PROTECTION All-Ukrainian Charitable Foundation and others. These civil society institutions not only protect the rights to freedom of their members and third parties, but also carry out independent monitoring of human rights and freedoms, develop proposals to improve the law-making and law-enforcement aspects of human rights activities in Ukraine.

The authors of the Civil Society in Ukraine: Current State, Challenges, Strategy for Modernization monograph (2018) write that public human rights organizations are also acting through:

'...representing the interests of citizens in state authorities, exercising control over their activities, organizing the participation of citizens in solving public affairs and ensuring the transparency of these processes, promoting the establishment of social harmony through constructive dialogue with authorities, representatives of various political forces,

national groups; documentation of violations; finding remedies for victims of such violations by providing legal, psychological, medical or other support; the fight against impunity is a phenomenon that is a breeding ground for the systematic violation of human rights and fundamental freedoms; participation in authorized and unauthorized protest actions; and the promotion of human rights and the dissemination of information on human rights defenders at the national, regional and international levels'[39]. This quotation emphasizes the diversity of methods and forms of human rights protection in Ukraine and the world as a whole.

In case when national extrajudicial remedies for human rights have been exhausted, a person has the right guaranteed by the Constitution of Ukraine to appeal to international human rights organizations (Art. 55)[40]. So, today, there are the following international human rights organizations: the European Commission on Human Rights, the International Committee for the Defence of Human Rights, Amnesty International, *Freedom House, Health Right International* and others that effectively operate in Ukraine. They not only react to concrete facts of a resonance violation of human rights, but also carry out systematic monitoring of the effectiveness of human rights activities in different countries of the world.

So, *Freedom House* has published an annual report, Freedom in the World, on the degree of democratic freedoms in countries and disputed territories around the world, since 1972 (in book form in 1978). This report assesses the current state of civil and political rights on a scale from 1 (the most free) to 7 (the least free). These reports are often used by academics and experts to develop new human rights strategies.

CONCLUSIONS

The generalizations, provisions and conclusions of guaranteeing and protecting human rights and freedoms as a condition of the development of a state governed by a rule of law and a democratic society in the present study will be incomplete without a problem of proper scientific

[39] Громадянське суспільство в Україні: сучасний стан, виклики, стратегія модернізації: монограф. У 2 т. / за заг. ред. акад. НАН України Ю.С. Шемшученка та акад. НАПрН України О.В. Скрипнюка. / Т. 1: Загальнотеоретичні та конституційно-правові аспекти розвитку громадянського суспільства в Україні. – К. : Вид-во «Юрид. думка», 2018. – С. 353-354.

[40] Конституція України : прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 року // Відомості Верховної Ради України. – 1996. – № 30. – Ст. 141.

substantiation of human rights activities. It is obvious that the system of guarantees and mechanisms of protection of fundamental rights and freedoms in Ukraine and abroad, which are revealed and disclosed by us, remain certain constitutional and legal attributes, the presence of which does not in itself testify to the exemplary status of observance of human rights and freedoms. The effectiveness of the relevant safeguards and mechanisms of protection is provided through human rights activities, the stages of which, in our opinion, are the followings: (a) affirmation; (b) guarantee; (c) protection; and (d) renewal of constitutional rights and freedoms.

At the same time, despite a large number of thorough works on human rights and freedoms, the issues of human rights protection, as an independent form of legal activity, remain poorly investigated in Ukraine. Although, in recent years, this problem has become increasingly the subject of attention of lawyers. For example, P. Kornienko wrote that:

'*...under the constitutional bases of human rights activities in Ukraine should be understood first and foremost purposeful and structured legal activity of state authorities and local self-government bodies, their officials, as well as civil society and business institutes for protection and restoration of human rights and freedoms approved and guaranteed by the Constitution of Ukraine ....*'[41].

It is clear that the development of legal science in the field of human rights and freedoms and their protection is now doomed to a paradigm shift: from descriptive (narrative) (history and empirical base of the present) and statement of attributes (the constitution and laws, the system of bodies authorized to ensure human rights) to the justification of the latest doctrine of human rights activities, which should be established as a priority function of the state and society.

SUMMARY

The research is devoted to the actual problem of guaranteeing and protecting the constitutional rights and freedoms of man and citizen in Ukraine. The article substantiates the fact that in the 21st century, human rights and freedoms remain the most important value, and the state's ability to create conditions for their effective implementation and

[41] Корнієнко П.С. Конституційні основи правозахисної діяльності в Україні : монограф. / П.С. Корнієнко. – К. : Видавництво Ліра-К, 2018. – С. 301.

mechanisms of protection in case of violation indicate the maturity of not only the state but also civil society.

It is noted that the guarantees of constitutional human rights and freedoms and the protection of constitutional rights and freedoms are related, but not identical categories. If the guarantees of constitutional rights and freedoms of man are, first of all, is a system of conditions and means for the effective realization of human rights and freedoms, then their protection is an independent form of legal activity, the content of which is the purposeful and systemic activity of the person, society and the state with regard to extrajudicial and judicial protection and the restoration of already violated constitutional rights and freedoms.

The analysis and general description of general and special legal guarantees of human rights and freedoms, as well as the mechanism of their judicial and extrajudicial protection are carried out. Some problems of the theory and practice of human rights activities in Ukraine are considered.

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Information about the authors:

Fedorenko V. L.

Doctor of Law, Professor, Director of the Scientific&Research Center of Forensic Expertise on Intellectual Property of the Ministry of Justice of Ukraine, Honored Lawyer of Ukraine, Forensic Expert of the Higher Qualification Class

26, L. Ukrainka Boulevard, Kyiv, 01133, Ukraine

fedorenko900@gmail.com

ORCID 0000-0001-5902-1226

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COLLEGIAL PUBLIC ADMINISTRATIVE SUBJECTS IN ADMINISTRATIVE LEGAL PROCEEDINGS AS PARTIES TO A CASE (A PLAINTIFF, A DEFENDANT, AND THE THIRD PERSON)

Tsvirkun Yu. I.

The law for people has been always a certain order in society[1] which always required security and protection. Taking into account this law of social reality, it is unacceptable for society to have no efficiently justified and developed legal mechanisms to appeal against unlawful actions of a collegial public administration subject as well as their opportunity to appeal against offenders. However, these subjects could not be plaintiffs or take part in administrative proceedings in any other way during both post-soviet period of Ukrainian legal system development and before the adoption of the Constitution of Ukraine on June 28, 1996, where Article 55 provided the right to appeal to a court against decisions, acts or inaction of state authorities, self-government bodies, officials and officers, and Article 124, part 2 stipulated that court jurisdiction covered all legal relations arose in Ukraine. The period of 1997-2004 is characterized by researchers as such period, during which it was not possible to achieve the expected progress in the implementation of administrative reform[2]. Thus, during the period from 1996 to 2005, these opportunities regarding the collegial public administration subject were more illusory than real, and since 2006 to the present, the participation of these subjects in cases in administrative proceedings has been slowly tested on the basis of not yet thoroughly comprehensible issue at the level legal doctrine. Moreover, we should take into account that the model of administrative justice that is typical of the Romano-Germanic legal system, implemented within the framework of a separate organizational structure of specialized courts and relevant procedural legislation, reveals problems of efficiency in Ukraine, following from the evaluation of the prevailing dissatisfaction of

[1] Лившиц Р. З. Теория права. Учебник М.: Издательство БЕК, 1994. С. 11.

[2] Європейські орієнтири адміністративного реформування в Україні : монографія / за заг. ред. В. Д. Бакуменка, В. М. Князєва. К. : Вид-во НАДУ, 2005. С. 1.

population with the activity of courts as such[3], in our case, according to the criteria for administrative court availability, the level of public trust in the administrative court, professionalism of judges and employees in the court apparatus[4]. On this background, the issue of justice of decisions in cases involving collegial public administration subjects requires a clear definition of key concepts and elements of status of these subjects.

The legal nature of the administrative law subject manifests itself in its special properties. The administrative law subject is different from other elements of the administrative law system in the fact that it is a carrier of interrelated qualities, namely external isolation; personalization; the will, determined in administrative legal capacity; administrative legal regulation. The presence of such features in a particular subject allows noting that this subject is an administrative law subject, functioning in its system as an element and a carrier of rights and obligations. In turn, administrative law acts as an area of potential and actual interrelations and interaction of administrative law subjects, outside of which there is no its subjects[5]. Through the application of legal tools in overcoming economic and other social problems, they achieve the effect of realizing social value, the power of law, and their mission to be a stabilizing factor, ensuring, in particular: a) reliability and stability of relations; b) correlation of regulation with subjective rights; c) strict regulation and, at the same time, guarantee and protection of subjective rights; d) a set of way, in our case, a collegial way of decision-making that guarantees real, actual performance of legal obligations; e) the necessary procedure for implementation of legal actions, procedural forms and mechanisms aimed at the exercise of subjective rights and the achievement of truth in conflict situations[6].

As S. P. Pogrebnyak and M. I. Kozyubra have rightly emphasized, the subject is not something amorphous, non-personal. The subjects of the legal relations are (finally) always people who create the right to ensure normal life and exercise it, being in different statuses: an ordinary citizen,

[3] Довіра до суду та імідж судової влади: які вони сьогодні? / дата звернення 10.05.2018. URL : https://censor.net.ua/blogs/3065355/dovra_do_sudu

[4] Іванченко О. Система критеріїв оцінювання ефективності діяльності судів під час надання судових послуг. Підприємництво, господарство і право. 2017. № 11. С. 224.

[5] Мацелик Т. О. Суб'єкти адміністративного права: поняття та система: монографія. Ірпінь: Вид-во Нац. ун-ту ДПСУ, 2013. С. 82.

[6] Алексеев С. С. Теория права. М.: Издательство БЕК, 1995. С. 223.

a public official, association of people or community, etc.[7]. And if a person has subjective rights and obligations, even if he or she can not perform the first or observe the latter, then the legal entity as a collective, abstract (fictitious) subject works through its bodies, taking actions, including unlawful ones, only through the natural persons from whom it is composed. In this case, the morality of acts of such natural persons is evaluated on the basis of their corporate belonging to the collective entity[8], one of the specific manifestations of management of which, along with undivided authority, is collegiality.

The subjects of public authority namely, state power bodies, local self-government bodies, their officials, etc. are considered the typical subjects of relations in public law[9], as well as, following Yu. L. Paneiko, V. M. Bevzenko, G. V. Panova and others, non-state subjects with delegated powers from public authorities, for example, a private notary, an advocate etc.[10] [11]. As previously emphasized, public administration in administrative law of European countries is defined in most cases as a set of bodies and institutions implementing public authority through the implementation of law, by-laws and other actions in the public interest, that is, the system of organizational and structural entities that have acquired authority on legitimate grounds for satisfying such interests[12] in the area of intensive legal regulation, that is, beyond the private law fields, with the widespread use of dense normative means, in particular imperative norms, which clearly and exhaustively outline the powers of each, as well as legally effective forms of solving typical life problems and specific legal means of the operational level[13]. Public legal relations are based on subordination of subjects and express a centralized system of regulation, where common social interest, as a rule, is a priority[14].

[7] Загальна теорія права: підручник / За заг. ред. М.І. Козюбри. К.: Ваіте, 2015. С. 228.

[8] Máynez E. G. Introduccion al estudio del derecho : libro didáctico. – 53 Edición. México : Editorial Porrua, 2002. С. 279-280.

[9] Загальна теорія права: підручник / За заг. ред. М.І. Козюбри. К.: Ваіте, 2015. С. 230.

[10] Бевзенко В. М., Панова Г. В. Сутність та підстави втручання адміністративного суду у розсуд суб'єкта публічної адміністрації: монографія. К. : ВД «Дакор», 2018. С. 1-2.

[11] Панейко Ю. Л. Наука адміністрації й адміністративного права (загальна частина). Т. 1. Аугсбург, 1949. С. 107-112.

[12] Колпаков В. К. Адміністративно-правові відносини: поняття і види. Юридичний науковий електронний журнал. 2013. № 1. С. 102.

[13] Алексеев С. С. Теория права. М.: Издательство БЕК, 1995. С. 215, 219.

[14] Петров А. В., Баукен А. А. Теория государства и права: учебное пособие. Челябинск : Издат. центр ЮУрГУ, 2014. С. 132.

According to the criterion of the officials' number, exercising professional legal capacity, the public administration subjects are divided into individual and collegial subjects, including in the field of public administration. Branch legal capacity is defined by the branch of legislation that acts in relation to the person and, this way, specifies the range of legal relations in which a person can participate[15]. At the same time, T.O. Matselik rightly emphasized that such legal capacity is a potential ability (power) of a person to have and exercise rights and obligations in the field of public administration (administrative legal capacity and legal ability, respectively), but not legal capacity as such, but its administrative-legal type within the limits of the competence specified in law, exercised through the public authority of the subject independently in organizational and functional terms. In this case, the collegial public administration subjects and other collective subjects of administrative law are characterized by the fact that their social will is different from the will of certain persons who are members of their composition, and therefore they can be independent carriers of rights that belong to them only as a whole[16].

The collegium (from the Latin collegium - community, union, and collaboration) is a group of people. Collegiality is the form (principle) of the organizational structure of the public administration/public administration subjects provides, first of all, that it is governed by more than one official who jointly and within the powers generalized by the competence defined by laws, form and approve decisions/actions (including on the basis of the decisions approved). Such community of acts/decisions leads to the question of a quorum which is sufficient for legitimization of activity, as well as higher responsibility, comparing to the sole subjects of public administration, as a consequence of the will objectification of more than one person. This joint energy potential of the will and responsibility guarantees the quality of legal regulation in the form of decisions based on taking into account more/or all significant factors, including historically and socially justified interests of people, thus showing signs of democratic governance. At the same time, the intensity of such legal influence and regulation becomes a derivative of

[15] Алексеев С.С. Общая теория права : учеб. 2-е изд., перераб.и доп. М. : ТК Велби, Изд-во Проспект, 2008. С. 380.

[16] Мацелик Т. О. Суб'єкти адміністративного права: поняття та система: монографія. Ірпінь: Вид-во Нац. ун-ту ДПСУ, 2013. С. 81.

the mass of interests having received their legal mediation, and reflects its growth and enrichment of the structure of interests[17], in accordance with the permanent complication of social relations.

For completeness of the described facets of "collegiality" as a quality of the public administration subject, we take into account the manifestations of the phenomena of individual and collective legal consciousness and legal culture, which are revealed on the basis of legal regularity well-defined by S. S. Alekseev, namely: the quality of social environment, peculiarities of the "area", its energy orientation largely influences the construction of legal regulation, the effectiveness of regulation systems used during legal influence, in particular the systems of "duty - responsibility" or "rights - guarantees". For the subjects studied by us it is typical that the legal energy, which comes to the area of legal reality from above, from state bodies[18] is multiplied by social capital (knowledge, abilities, skills, etc.) of not one official, but their group.

Collegial bodies in their organizational structure are such bodies that solve complex issues of economic, socio-cultural and administrative-political construction at the respective territory and coordinate work in different areas[19]. In collegial bodies, administrative acts are usually adopted through discussion and subsequent voting and signing by all members of this body or only by the chairman of its meeting (hearing) and secretary[20]. The collegial structure of public administration bodies is expressed in the fact that the body itself is a collegium or that the body is headed by a group of persons (collegium), in particular, they have the highest decision-making authority in its composition, a board composed of several members of the highest units of such a body, and/or managers of its lower levels (structural units), organized in accordance with the principles of hierarchy and subordination[21]. Accordingly, collegiality as a form of organizational structure of collegial public administration subjects is expressed in the presence of group/collegial management bodies.

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[17] Шайкенов Н.А. Правовое обеспечение интересов личности. Свердловск: Изд-во Урал. ун-та, 1990. С. 87.

[18] Алексеев С. С. Теория права. М.: Издательство БЕК, 1995. С. 213, 224.

[19] Алексеев С.С. Общая теория права : учеб. 2-е изд., перераб.и доп. М. : ТК Велби, Изд-во Проспект, 2008. С. 4, 6.

[20] Галунько В., Діхтієвський П., Кузьменко О., Стеценко С. та ін. Адміністративне право України. Повний курс: Підручник. Херсон: Олді-плюс, 2018. С. 164.

[21] Давитнидзе И. Л. Коллегиальность и единоначалие в советском государственном управлении. М. : «Знание», 1974. С. 5.

Collegial bodies of public authority are characterized by certain "autonomy" of the body apparatus from collegial body members, except its head. These bodies consist of officials who are legally recognized as equal (Parliament, Constitutional Court, CEC, etc.) in the sense that within these bodies there is no official subordination between the body members and the person who heads (is the leader of) a collegial body (in separate exceptions - for example, the government). Not all members, but only the head of such body (and managers of existing structural units in it, for example, parliamentary committees) has the status of a subject of authority by exercising power management functions in relation to the apparatus of the collegial body (or the units of its structural subdivisions).

In the collegial bodies of public authority, the relations of public service arise provided that the body includes either public political entities (for example, the government) or persons who are vested with the status of civil servants (for example, the Accounting Chamber, the CEC, the Antimonopoly Committee). This way, the members of such bodies in internal organizational relations are the carriers of not the general legal status of a citizen (a natural person), but of a special legal status due to the entry into the collegial body to which the relevant persons are elected (for example, members of parliament) or appointed (for example, members of the High Council of Justice). At the same time, the Code of Administrative Legal Proceedings of Ukraine on July 6, 2005 (hereinafter – CAP) ensures the possibility to appear in the administrative court as a plaintiff on public service issues for persons with a special status if they, as members of a collegial body, occupy state political positions, are in state or other public service[22]. Collegiality for a collegial public administration subject is an organizational legal form (principle) of the public administration activities[23]. Therefore, we join the opinion that the main difference between the structure of administrative and legal status of individual and collective subjects of law is that the latter have more complex legal status, associated with the peculiarities of their formation and functioning. In particular, administrative-legal status of collective subjects of law also includes administrative competence, that is,

[22] Авер'янов В. Понятійно-термінологічні новели кодексу адміністративного судочинства України: дискусійні проблеми. Право України. 2011. № 4. С. 32.

[23] Давитнидзе И. Л. Коллегиальность и единоначалие в советском государственном управлении. М. : «Знание», 1974. С. 7.

the legislatively established scope of powers of such subject[24], its legal capacity, specified in the rights and obligations that constitute a single whole for officials of the subject of authority and show the same nature of a common compulsory rule which must be observed[25].

Thus, the substance of the collegiality phenomenon in relation to the public administration subject is represented as a way of its activity. It acts or avoids action through the use of a set of means, techniques and methods that reveal the involvement of several (more than one) natural persons in it. They prepare, discuss and take all other actions necessary for the appearance and implementation of the decision together. The material and legal nature of the collegial public administration subject is determined by means of administrative law through the definition of its features as a state and municipal subject of power, which carries out organizational and administrative activities aimed at the preparation and implementation of management decisions, the provision of services to population, etc., in the form of collective/group work, or a non-state subject with the powers delegated from the public administration subject with the appropriate nature and form of implementation. The implementation of such potential in the composition of participants to cases in administrative proceedings involves referring to relevant norms of the procedural content, determining the procedural and legal status of the collegial public administration subject.

The branch legal status of a subject in the field of administrative law should be considered as the most important and most fundamental part of the general legal status. The rights and obligations are specified taking into account the branch legal capacity in the administrative-legal status in a generalized form. It is considered in conjunction with implementation of rights and freedoms, competences in the field of public administration, as well as implementation of obligations assigned to the subject[26]. Administrative-legal status covers a set of specially defined subjective rights and obligations, enshrined in the relevant subject of administrative law norms. So, the necessary feature of acquiring an administrative-legal status by a person is the presence of specific subjective rights and

[24] Мацелик Т. О. Суб'єкти адміністративного права: поняття та система: монографія. Ірпінь: Вид-во Нац. ун-ту ДПСУ, 2013. С. 97.

[25] Явич Л. С. Общая теория права. Л.: Изд-во ЛГУ, 1976. С. 94.

[26] Мацелик Т. О. Суб'єкти адміністративного права: поняття та система: монографія. Ірпінь: Вид-во Нац. ун-ту ДПСУ, 2013. С. 126.

responsibilities in a person that are implemented by this person both in administrative legal relations and outside of them[27], and in any case are aimed at realizing the democratic essence of the state, since the state does not govern its citizens, but created for citizens, provides them services, conditions for the full exercise of their rights and freedoms, protects their interests[28].

As V. M. Bevzenko rightly emphasized, updated on October 03, 2017, the CAP preserves in general the approach to definition of the subject of authority that existed before, and at the same time, in clauses 9, 10, and 12 of Article 19 of the CAP provides three new categories of subjects that were previously distinguished only at the level of judicial practice (state border guard institutions, attestation and other expert commissions). Some subjects of authority (or persons equated with such subjects) are provided by other articles of the CAP (27, 28, 151, 266, and 267). However, certain conflict issues were left behind the attention of a lawmaker. For example, the legal status of advocate self-government bodies, the Audit Chamber of Ukraine and the Public Council of Integrity remained uncertain. The scientist suggested that the judges should be guided by four features by which one can check that one or another subject belongs to the subjects of authority: 1) the subject must act solely on the basis, within the limits and in the manner prescribed by law; 2) the possibility of adopting an administrative act; 3) implementation of administrative authority at the same time; 4) the limited implementation of powers by administrative and legal relations. As for classification of these subjects, the judge proposed to distinguish three groups of subjects: 1) with the status of a legal entity: state authorities, state bodies; 2) collective entities without the status of a legal entity: MSEC, departments of the State Border Guard Service of Ukraine; 3) individual subjects: officials and officers[29], among which only the bodies of the first group may be collegial public administration subjects.

[27] Авер'янов В. Б. Адміністративне право України. Академічний курс : в двох томах. К.: ТОВ «Видавництво «Юридична думка», 2007. Том 1: Загальна частина: підручник / гол. ред. кол. : Авер'янов В. Б. С. 194.

[28] Самагальська Ю. Я. Інспекційні повноваження та правові основи їх реалізації. Вісник Львівського ун-ту. Серія юридична. 2012. Вип. 56. С. 209.

[29] Українське право: Новий Кодекс адміністративного судочинства: позиція суддів Верховного Суду з проблемних питань / дата звернення 29.01.2018. URL: http://www.vaas.gov.ua/news/ukra%D1%97nske-pravo-novij-kodeks-administrativnogo-sudochinstva-poziciya-suddiv-verxovnogo-sudu-z-problemnix-pitan/

So, we have as the result that collegial public administration subjects may or may not have a status of legal entity. Establishing the legal status is one of the forms of legal regulation of a subject's activity. Legal status is a complex legal structure that allows characterizing the legal position of a particular person (a group of persons); defines their place in the system of administrative law subjects, consolidates their rights and obligations[30], their guarantees, liability and other elements. Considering the structure of subject's legal status, it is necessary to distinguish between two types of subjects: individual and collective. The difference between these subjects predetermines the features and structure of their legal status. In particular, subjects are divided into individual (citizens, foreigners, stateless persons) and collective in administrative law, which, in turn, are divided into governmental and non-governmental organizations[31]. In the case of collegial public administration subjects, we add to the existing elements of the legal status definition – public-law functional orientation and collegiality – the elements of the status of a legal entity or its derivative elements of the status of collegial public administration subject operating on the basis of a legal entity or several legal entities, but did not obtain such signs itself.

Definition of the concept of "a collegial public administration subject as a party to a case in administrative proceedings" acquires the completeness through a combination of its abovementioned material and legal features with elements of procedural and legal status. As the scientists rightly emphasize, the status of the subject of authority in connection with its entry into the administrative process acquires different forms: the status of the parties, third persons, bodies authorized in court to protect the rights, freedoms and interests of other persons[32]. Cognition of the legal status in the administrative procedural body of the collegial public administration subject involves taking into account what it consists of as a real fact of the surrounding reality, which reveals at least two hypostases: administration and evaluation of administration in court. The substance of the first one in the legal field will remain uncertain even roughly, since in general it belongs to the subjective side of society life

[30] Мацелик Т. О. Суб'єкти адміністративного права: поняття та система: монографія. Ірпінь: Вид-во Нац. ун-ту ДПСУ, 2013. С. 97.

[31] Ведєрніков Ю. А., Шкарупа В. К. Адміністративне право України: навчальний посібник. К. : Центр навчальної літератури, 2005. С. 41.

[32] Бевзенко В.М. Суб'єкти владних повноважень у адміністративному процесі України. Журнал східноєвропейського права. 2013. № 1. С. 17.

(legal culture and its elements), objectifying the real facts of subjective-objective reality, expressed in the plurality of actions of the complainant and the respondent, becoming the actual grounds of the claim and objections to it. The only static fragments of the phenomenon studied by us are limited by establishment of the fact of use of a collegial method of right exercise, the listing of public administration subjects that are organizationally suitable for the application of such method, and by the outline of their competence. And all these elements do not add anything special to the procedural status of these subjects in administrative proceedings. The substance of the second one (administration judicial assessments) is an unstable field of judicial practice, possibly stabilized by decisions in example cases.

As a party to a case in administrative proceedings, the collegial public administration subject adds to its signs (public authorities in the field of management, collegiality of decision-making and responsibility for their implementation, etc.) some features that are determined by nature of the judicial administrative process. In fact, its material legal feature of administrative responsibility unfolds in dynamics of procedures under the current CAP. In the case, this subject does not perform any public authority functions (administrative- regulatory, administrative-procedural, administrative-jurisdictional, administrative-delinquent and/or etc.), but is solely based on the principles of dispositiveness and equality in relation to other participants to the case as a complainant, respondent, third person and/or person of other administrative-procedural nature within the current CAP.

Therefore, the mechanics of initiating the protection of public interests, and often the state position, the responses to claims through objections and justification of their decisions and acts, etc., becomes the main functional load of the concept of “a collegial public administration subject as a party to a case in administrative proceedings”. In this approach, it becomes a decisive feature of the definition studied.

There is no definition of “parties to the case” in the CAP. Scientists reasonably describe that a party to administrative legal proceedings (administrative court proceedings) is a person vested with procedural rights and obligations by the current legislation of Ukraine in the area of administrative cases by administrative courts and who initiates the administrative process to protect their rights and legitimate interests,

protection of rights and the legitimate interests of others, or in order to facilitate the administrative process implementation. Thus, it is the person who has a legal capacity and can perform procedural actions aimed at achieving the goal of the process, at least in one of the administrative process stages[33]. Both consideration and resolution of a dispute with the participation of the subject of authority in an administrative court are necessarily preceded by legal relations, regulated by the norms of substantial public law and are characterized by collisions of subjective legal interests, the presence of a dispute regarding the mutual distribution of rights and obligations between the natural person (legal entity) and the subject of authority[34].

According to the CAP, identification of a collegial public administration collective as a party to a case under the rules of administrative proceedings takes place through its comparison with the list of those persons listed in Article 42, namely: it is indicated that the parties to the case are parties, third persons; the bodies and persons authorized by law to apply to the court in the interests of other persons may also participate in cases. For example, a claim for recognition of an unlawful legal act of a local council (respondent) "On granting a permit for the use of land for placement of stationary trade objects" filed by the local state administration (a plaintiff) may be supported by an environmental public organization (the decision of which is approved by the management) as a third person who files independent claims to the defendant in the form of an obligation of the latter to adopt a new decision to refuse the business entities in the allocation of land for placing their stationary trade objects.

After unification on October 3, 2017, the provisions of the Civil, Commercial Procedural Codes and the Code of Administrative Legal Proceeding, including on the legal status of third persons, the problems were eliminated which were not determined by certain peculiarities of the considered cases and created unjustified artificial obstacles for unifying the practice of the process at considering various categories of cases[35]. However, the concepts of "parties", "third persons" are currently defined

[33] Топор І. В. Поняття та види учасників адміністративного судочинства: проблеми теорії. Актуальні проблеми держави і права. 2011. Вип. 58. С. 265-266.

[34] Бевзенко В. М. Інститут процесуальної співучасті в адміністративному судочинстві України: сутність та правове регулювання. Держава і право. 2010. № 47. С. 225.

[35] Смітюх А. Треті особи в адміністративному судочинстві: особливості статусу. Юридичний радник. 2008. № 1. С. 86.

in the CAP only in a descriptive way, with the consolidation of key types of thought structures, on which the process of reflection on the studied object is based. The parties are persons taking part in the case on their own behalf and in order to protect their own rights and interests, the dispute between them about the true nature and content of subjective rights and obligations is resolved by the court. According to the CAP, the parties include the plaintiff and the defendant. As it is clearly emphasized in scientific literature, taking into account the content of procedural functions performed during the administrative proceedings, two types of subjects can be distinguished: those who defend the claims, and those who defend themselves against such claims[36]. The parties conduct the process on their own behalf, they are subject to court costs, the court decision is made in their names and the decision is fully applicable to them. Participation of a party or a third person in the process is also ensured through representation of their interests by the procedural representative. In case of withdrawal or substitution of the party or the third person in disputable relations, the court allows replacing of the party or the third person at any stage of administrative process with the legal successor. All actions committed in the process before the legal successor's entry are binding for him to the extent that they would be binding for the person who was replaced by him[37].

Based on the principle of administrative procedural law dispositiveness, appealing to the court for protection of their violated or disputed rights is the prerogative of an exclusively linked material-legal and procedural-legal person (a plaintiff) or a prosecutor who is authorized to file claims in the interests of a collegial public administration subject[38]. For example, according to clause 30 of Part 1 of Article 43 of the Law of Ukraine "On Local Self-Government" on May 21, 1997, the issues are resolved exclusively at the plenary sessions of the district and regional council regarding the adoption of decisions on appeals to the court on recognition of unlawful acts of local executive bodies, enterprises, institutions and organizations restricting the rights of territorial communities in the area of their common interests, as well as the powers

[36] Романченко Є. Ю. Виключні права суб'єктів процесуальних функцій в адміністративному судочинстві України. Наук. вісник Ужгородського нац-го ун-ту. Серія Право. 2014. Вип. 26. С. 166.

[37] Бречко А. В. Особливості правового положення сторін в адміністративному судочинстві. Форум права. 2009. № 1. С. 79–80.

[38] Бречко А. В. Особливості правового положення сторін в адміністративному судочинстві. Форум права. 2009. № 1. С. 80.

of regional, district councils and their bodies. Part 3 of Article 69 of the Law of Ukraine "On the Election of the President of Ukraine" on March 5, 1999 stipulates that a public organization has the right to file a decision about refusal to grant it permission to have official observers at the presidential elections in Ukraine to the court.

The subject studied by us in the administrative process, as a plaintiff, is a person in defense of whose rights, freedoms and interests a claim has been filed before the administrative court, including the subject of authority, for execution of powers of which a claim has been filed in the administrative court. Such persons are united by defending of claims, which is the main content of functions of these subjects. We should consider that the right to an administrative claim in its structure is ambiguous and consists of two essences: material-legal and procedural-legal[39]. Procedural-legal form is reflected in the right to present an administrative claim to a court - a claim to the court on the protection of rights, and the material-legal part is the right to accept such claim and to satisfy the legal requirements of the plaintiff to the defendant[40].

Taking into account the provisions of Article 19, 47 of the CAP, a collegial public administration subject, as a plaintiff in the administrative process, acts only in cases expressly provided by law. It may choose another subject of authority as the defendant as well as a natural person or legal entity of private law. The collective public administration subject acts in court only through a representative, because each individual member of the collegial subject does not acquire the procedural and legal status of the party to the case.

Considering the nature of collegiality as the principle of management involves administration of a group of persons (collegium), each of whom bears personal responsibility for a particular area of activity[41], the rights of the plaintiff in relation to the power of legal energy and responsibility exceed each individual public administration subject acting alone, on the principle of undivided authority. The plurality of individuals within the collegial public administration subject, in otherwise equal conditions (i.e.,

[39] Науково-практичний коментар до Кодексу адміністративного судочинства України / за заг. ред. С. В. Ківалова, О. І. Харитонової. Х. : ТОВ "Одисей", 2005. С. 246.

[40] Бречко А. В. Адміністративний позов як форма захисту прав, свобод та інтересів у сфері публічно-правових відносин. Актуальні проблеми державного управління. 2009. № 2. С. 367.

[41] Крысанов А. В. Конституционно-правовая ответственность выборных и должностных лиц федеральных органов государственной власти: дис. канд. юрид. наук : спец. 12.00.02. Челябинск, 2014. С. 142.

professionalism and spirituality of its members) affects positively the quality of its decisions, as well as the balance and justification of actions in the court proceeding. A judge will deal not only with the legal position of the majority of the collegial public administration subject, but also with the individual opinions of its members, whose reflections on the subject of compliance with law and legislation requires a systematic comparison of all these factors. This feature of the categories of cases involving such collegial subject may mathematically require creative legal energy from more than one judge, which accordingly raises the question about collegiality of judicial consideration of claims and objections to claims involving a collegial public administration subject, so that the decision of the administrative court becomes an embodiment of uncontested justice by the parties to the case or other persons and caused immutable trust in the court. After all, what our society calls the law is the result of the process of court decisions, which allows solving certain contradictions. The best ideas in which these decisions are embodied are of great significance exceeding the facts of specific disputes they solve[42]. One should imagine that the decision (actions) of such subject is indeed progressive and complex in content, for example, the National Commission on Securities and the Stock Market (hereinafter referred to as the NCSSM), in accordance with Article 19 of the CAP, appeals to the court with the claim to the Cabinet of Ministers of Ukraine (CMU) and/or some regional councils, as for removing obstacles to implementing its decision on joint investment, taking into account the trends of the financial market development in the short, medium and long term, as well as during a special period, may contain a basis that, during its unfolding and consideration in court, combined with the individual positions of the members of the NCSSM and all other evidence in the case, will be so complex that it will be impossible to evaluate it using mental resources of one judge only, even provided that experts, specialists (Articles 68, 70 CAP, respectively) and others are involved.

Not only the plaintiff has a legal interest in the administrative process, for whom it is both in obtaining the benefit that the decision of the administrative court on satisfaction of the claim will bring to him (material-legal interest) and in making the corresponding decision on

[42] Hoeflich M. H., Deutsch J. G. Judicial Legitimacy and the Disinterested Judge. Hofstra Law Review. 1978. Vol. 6. P. 749.

satisfaction of the claim (procedural interest). A defendant has a legal interest as well, but it is opposite in content, for whom the material-legal interest consists in establishing the absence of any legal obligations to the plaintiff by an administrative court decision, and procedural - in making a decision to refuse in a claim[43].

In the status of the defendant, a collegial public administration subject in administrative proceedings is the subject of authority, to which the plaintiff's claim is addressed. A defendant is a subject whose functions consist in protecting from claims in administrative proceedings. Such functions can be performed by third persons who do not appeal with independent claims, their representatives[44] [45]. The state body and/or local self-government bodies bear responsibility for the decisions, actions or inaction that are the consequence of functioning of the collegial body[46].

From the defendant's status of the collegial public administration subject in administrative proceedings after the court decision on satisfaction of the claim remains its key quality, namely: responsibility for the consequences of their actions based on a valid court decision subject to execution. However, scientists have emphasized for a long time that there is also a growing number of cases of public neglect of decisions made in relation to collective subjects of authority (local councils, executive committees of local councils, etc.). According to the CAP, punishment for such collegial body behavior is borne by its head. However, he has no and can not have legal levers of influence on the rest of members of this body. Under such conditions, the head is requested to provide the right to execute a court decision solely, if the collegial body did not do so within the period established by law or by court[47]. In connection with it, O. M. Paseniuk's suggestion is fully justified about the fact that a separate law on the procedure for executing court orders in cases concerning collegial decisions, actions or inaction of subjects of

[43] Бречко А. В. Особливості правового положення сторін в адміністративному судочинстві. Форум права. 2009. № 1. С. 80.

[44] Романченко Є. Ю. Виключні права суб'єктів процесуальних функцій в адміністративному судочинстві України. Наук. вісник Ужгородського нац-го ун-ту. Серія Право. 2014. Вип. 26. С. 166.

[45] Матвійчук В. К., Хар І. О. Науково-практичний коментар до Кодексу адміністративного судочинства України. В 2-х тт. Том 1. / За заг. ред. В. К. Матвійчука. К. : КНТ, 2007. С. 123.

[46] Петришина М. Д. Суб'єкти владних повноважень як адміністративні позивачі в адміністративному процесі України. Юридичний науковий електронний журнал. 2017. № 6. С. 226.

[47] Компанієць І. М., Чиркін А. С. Деякі проблеми розвитку адміністративного судочинства в Україні. Теорія і практика правознавства. 2011. № 1. С. 6.

authority should be adopted[48], or the current Law of Ukraine "On Enforcement Proceedings" on June 2, 2016 should be added by relevant provisions, which does not contain at the moment any rules suitable for taking into account the specifics of implementation of the decisions of the administrative court by collegial public administration subjects. There are no similar provisions in section IV "Procedural issues related to execution of court decisions in administrative cases" of the CAP. Without adoption of these rules, the negative legal consequences for the defendant of the collegial public administration subject in administrative proceedings will be illusory, since the decisions will remain unfulfilled, and collegiality, as an effective democratic way of public administration, will be perceived by citizens only as a distortion of state responsibility, its deformation, which leads only to delays and losses[49]. The unfolding of such cultivation of collegial perception of citizenship as a harmful approach to public administration is a potentially good basis for the emergence of anti-democratic intentions based on the idea of a public resource management of one strong leader acting on the principle of sole command. Extrapolation of such approach to perception of the organizational principle priority in public administration at the level of collective/national consciousness provides its further transformation into stable antidemocratic tendencies that do not provide social progress by their nature and which our nation has tried to eliminate since the late 80's of the 20th century based on examples of the best social and legal practices of highly developed countries in the West and the East. In fact, it is important at present that administrative proceedings would be able to show finally its effect not only to individual civil servants but also to their work as a whole within a collegial public administration subject, without making an impression of the personal irresponsibility of each member of such subject. At the beginning of the 20th century, O. S. Alekseyev successfully determined that the collegial public administration subject is a joint whole of its members, the highest governmental board (public administration), united by general political principles and designed to perform government functions (public administration) within the law and in accordance with these principles. He also emphasized that such

[48] Пасенюк О. М. Адміністративне судочинство: стан та напрямки розвитку. Вісник Вищого адміністративного суду України. 2011. № 3. С. 7.

[49] Ореховский А. И. Философия Ответственности. Методологический, концептуально-теоретический, правовой, аналитико-прогностический аспекты. М.: Алгоритм, 2015. С. 11, 22.

institution as a join homogeneous whole, united by general political principles, is an institution of the law-governed state and an indispensable condition for the constitutional order[50], in which courts should restore the violated right by obliging a subject of authority, including a collegial body, to make a decision on the possibility, if refusal is considered unlawful, and other grounds for refusal are not provided (the ECHR judgment in the case Olsson v. Sweden on March 24, 1988)[51].

As a party to a case, a collegial public administration subject may also act as a co-plaintiff or co-defendant in the administrative process. Procedural joint participation in administrative legal proceedings is a special procedural institution arising from uniform legal relations if the rights, freedoms, interests or obligations of participants in administrative proceedings do not exclude each other, the application of which ensures the exclusion of cases of making opposite decisions on similar claims. The actual presence of this institute in administrative proceedings follows from the norms of the CAP of Ukraine, which, however, do not have provisions yet on the detailed procedure for use of procedural joint participation with the definition of procedural status peculiarities[52]. As regulated by the rules of administrative procedural legislation participation in the administrative case of two or more plaintiffs or defendants, it can be active (active), inactive (passive) and mixed[53]. As participation in the administrative case of two or more plaintiffs or defendants is regulated by norms of administrative procedural legislation, it can be acting (active), non-acting (passive) and mixed[54]. Such options of procedural joint participation (plurality, collectivity of the parties)[55] allow filing of collective claims or prosecuting several defendants at the same time. For example, the claim of local state administration on the motives of national security and public order provision to the political

[50] Алексеев А. С. Безответственность монарха и ответственность правительства. М.: Типография т -ва И. Д. Сытина, 1907. С. 25-26.

[51] Рішення у справі «Олссон проти Швеції» : Європейський суд з прав людини від 24.03.1998 р. (скарга №10465/83). URL: http://europeancourt.ru/resheniya-evropejskogo-suda-na-russkom-yazyke/olsson-protiv-shvecii-postanovlenie-evropejskogo-suda/

[52] Сало А. Особливості інституту процесуальної співучасті в адміністративному судочинстві України. Вісник Нац-го ун-ту «Львівська політехніка». Серія: Юридичні науки. 2017. № 865. С. 329.

[53] Бевзенко В. М. Інститут процесуальної співучасті в адміністративному судочинстві України: сутність та правове регулювання. Держава і право. 2010. № 47. С. 227.

[54] Бевзенко В. М. Інститут процесуальної співучасті в адміністративному судочинстві України: сутність та правове регулювання. Держава і право. 2010. № 47. С. 227.

[55] Рафальська О. В. Поняття «процесуальна співучасть» в адміністративному судочинстві України. Право і суспільство. 2017. № 2. С. 119.

party, its deputy faction and public organizations joint in their actions with a collegial decision-making principle (directorate, board, meetings, etc.) on the restriction of the right to peaceful assembly by prohibiting them to use loudspeakers, motor vehicles, posters, install tents, scenes, sheds at a specific time in a specific location.

The concepts of the third persons (from initial nominations in Latin: "litis denunciation", "laudatio auctoris") are found at the level of legal doctrine. They are defined as participants in the administrative process, which enter or are involved in it at any time until its completion, in order to realize their own specific interests, which are completely or partially different from the interests of the parties[56]. Participation of a third person contributes to a comprehensive consideration of the case, the gathering of more evidences, the correct resolution of the case, helps to avoid situations where in legal cases which are typical in content opposite court decisions are adopted[57]. Part 1 of Article 49 of the CAP, third persons who appeal independent claims regarding the subject matter of the dispute may enter into the case before the completion of preparatory proceedings or before the beginning of the first court hearing, if the case is considered under the procedure of simplified proceedings, bringing a claim to one or more parties. The satisfaction of such persons' claim should exclude satisfaction of the claims of the plaintiff to the defendant completely or partially. In case of the entry of third persons who file independent claims on subject matter of the dispute, the consideration begins from the outset of the administrative case by the petition of the party to a case.

In accordance with Part 2 of Article 49 of the CAP, third persons who do not declare independent claims on the subject matter of the dispute, may enter a case on the plaintiff's side or the defendant's side before the end of the preparatory meeting or before the beginning of the first court hearing, if the case is considered under the procedure of the simplified proceedings, in case when the decision in the case may affect their rights, freedoms, interests or obligations. They can be involved in participation to the case upon the request of the participants to the case as well. If an administrative court, making a decision on the issue of the opening of proceedings or in the preparation of a case for consideration,

[56] Рябченко Я. Участь третіх осіб під час оскарження нормативно-правових актів. Вісник НАПрНУ. 2013. № 3. С. 152.

[57] Кодекс адміністративного судочинства України : у 2 т. : [науково-практичний коментар / за заг. ред. Р. О. Куйбіди]. К. Книга для бізнесу, 2007. Т. 1. 2007. С. 232.

determines that a court decision may affect the rights and obligations of persons who are not parties to the case, the court shall involve such persons in participation in the case as third persons who do not declare independent claims regarding the subject matter of the dispute. The introduction of third persons who do not declare independent claims regarding the subject matter of the dispute does not result in consideration of the administrative case from the outset.

Part 3 of Article 49, taking into account the social importance of powers of such collegial public administration subject as the National Agency for the Prevention of Corruption, specifically emphasizes the possibility of involving it as a third party which does not file independent claims on the subject matter of the dispute on the plaintiff's side in cases involving the use of the head or the employer or creation a threat by him in taking negative measures of influence to the plaintiff (dismissal, coercion to dismissal, disciplinary action, transfer, attestation, change in working conditions, refusal to appoint to a higher position, reduction in salary, etc.) in connection with his notification or his family member about a violation of the requirements of the Law of Ukraine "On Prevention of Corruption" by another person.

The essence of the legal capacity of a collegial public administration subject in administrative proceedings as a plaintiff, a defendant or a third person is determined by the CAP through its rights and obligations. Among the rights of the participants in the administrative process are mentioned the legal opportunities: 1) to familiarize with the materials of the case, to make extracts from them, copies, to receive copies of court decisions; 2) to submit evidences; to participate in court sessions, unless otherwise specified by law; to participate in the study of evidence; ask questions to other participants to the case, as well as witnesses, experts, specialists; 3) to submit applications and petitions, provide explanations to the court, present their arguments, considerations regarding issues that arise during the judicial consideration, as well as objections to statements, petitions, arguments and considerations of other persons; 4) to familiarize with the protocol of the court session, the record of the court session by technical means, make copies of them, submit written comments about their incorrectness or incompleteness; 5) to appeal against court decisions in cases determined by law; 6) at own expenses, to order and obtain certified copies of documents and extracts from them; 7) to use other procedural rights determined by law. It is noted that the parties to the case are obliged: 1) to show respect for the court and other participants in the

court process; 2) to contribute to timely, comprehensive, complete and objective establishment of all circumstances of the case; 3) to appear in a court session upon the call of a court, if such appearance is recognized by the court as compulsory; 4) to submit the evidence available to them in the order and within the terms established by law or court, not to conceal evidence; 5) to provide the court with complete and reliable explanations of the issues raised by the court, as well as the participants in the case in court; 6) to execute procedural actions in accordance with the terms established by law or by court; 7) to perform other procedural duties, determined by law or by court (Part 3-5 of Article 44).

In practice, the implementation of these procedural powers faces the problems of interpretation of possibility and/or the need to commit or refrain from actions in relation to particular circumstances of the case by the court and participants, taking into account the principles of administrative legal proceedings. The Supreme Court unification of the implementation of administrative law contributes to ensuring the full use of procedural rights and proper performance of obligation by collegial public administration subjects as well as any other type of participants in the administrative process, according to Part 2 of Art. 36 of the Law of Ukraine "On the Judicial System and Status of Judges" on June 2, 2016, which, among other things, takes into account the relevant practice of the ECHR, for example, in relation to the exclusive right of the parties to evaluate the compliance of materials provided by the witness with his comments; providing opportunities for expressing opinions on each document in the case, including those received by the court in their petition (Pellegrini v. Italy, § 45); in relation to the right to competitive proceedings: the party to the case must be able to familiarize with evidence in the court and comment on their existence, content and authenticity in due form within the determined time (Case Kramer and Others v. the Czech Republic, § 42; Immeubles Groupe Kosser v. France, § 26)[58] [59].

In general, the above-described specificity of the material legal capacity of the collegial public administration subject as a party to a case in administrative proceedings is nominated by the word "procedural",

[58] Посібник зі статті 6 право на справедливий суд (цивільна частина) Дослідницького підрозділу Європейського Суду з прав людини. URL: https://www.echr.coe.int/Documents/Guide_Art_6_UKR.pdf

[59] Корецький І. О. Принцип змагальності сторін в адміністративному судочинстві: дис. канд. юрид. наук : спец. 12.00.07. К., 2017. С. 169-188.

"judicial" [60] or other similar to it (in particular, Article 43 of the CAP). Therefore, Articles 44, 47, 49, 51, 53, 54 of the CAP contain a list of powers (rights and obligations) of this kind of subject. This detailing of its administrative procedural legal capacity is the key to the corresponding legal status, along with the principles of administrative legal proceedings (Articles 2, 5-18 of the CAP), responsibility (Chapter 9 of the CAP "Measures of Procedural Coercion", Article 382 of the CAP "Judicial Control over the Execution of Judicial Decisions in Administrative Cases"; Article 185-3 "Manifestation of Disrespect to a Court or Constitutional Court of Ukraine", Article 185-6 "Failure to take measures for a separate court order" of the Code of Ukraine on Administrative Offences on December 7, 1984, № 8073-X) etc.

The ability to act in a case through a representative becomes the next important element of the procedural legal status of any participant in the administrative process, including those studied by us. This follows from the objective reason that they have the legal possibilities provided by law for defending claims in person as a plaintiff or a third person, as well as through intermediation of other persons - representatives, third persons and other authorized subjects, in accordance with the CAP. The legal status of representatives as subjects of the administrative process is a complex category, which includes the tasks and functions, rights, obligations and responsibilities of representatives specified by administrative law. Among the tasks of the representative, determining his legal status are the following: 1) counseling on the opportunity to apply the law by a person; 2) the protection of rights, freedoms and legitimate interests of a certain person in the administrative judicial process; representation of the client in the administrative court; 3) the promotion of the administration of justice and the maintenance of legitimacy; 4) increase of legal awareness and legal culture of population[61]. Representatives of collegial public administration subjects in administrative proceedings may be prosecutors or lawyers, as well as, in case of revision of legislation norms on administrative proceedings in relation to the right to represent and protect the interests of other persons

[60] Сонюк О. В. Особливості участі невладних суб'єктів у правовідносинах адміністративного судочинства. Часопис Київського університету права. 2013. № 1. С. 149.

[61] Лисенко Ю. О. Представництво в адміністративному процесі: автореф. дис. на здобуття наук. ступеня канд. юрид. наук : спец. 12.00.07 «Адміністративне право і процес; фінансове право; інформаційне право». Запоріжжя, 2018. С. 12.

when considering administrative cases by non-advocates[62], other persons admitted by the court.

Thus, unfolding the problem of conceptualization of the legal phenomenon such as "a collegial public administration subject as a party to a case in administrative proceedings", revealed that its theoretical comprehension and substantiation at the level of doctrine are taking place at present. At the same time, practical steps to resolve the issues of participation of such subject have been implemented since the entry into force of the CAP. The problem we have dealt with in this work is on the edge of administrative law, in terms of defining the concept of "a collegial public administration subject", and of the administrative process, in terms of attribution of the latter to the participants in the case by way of administrative proceedings. The positivist approach to law provides operating of the legal lexis of "legal status" for the complete description of the formal-legal substance of the concept "a collegial public administration subject as a party to a case in administrative proceedings". At the same time, within the natural legal approach of legal thinking, these thoughts are transformed into essence of the legal phenomenon, denominated by the corresponding complex expression. In total, "a collegial public administration subject as a party to administrative proceedings", being an institution of state and municipal administration, including represented by the subjects of private law with public authority, is conceptualized through the following features: 1) public authorities, including those delegated to private law entities, including within the framework of public-private partnership forms[63] [64] etc.; 2) equality and absence of hierarchical relations (official subordination) between officials, as well as between them and the head (manager) of this subject; 3) the method of social objectification: group/collective organizational and legal activity and the form (principle) of organizational structure that is adequate to it during the development and adoption of decisions reflecting their absolute, or predominantly common/agreed upon all essential issues, will, and the joint legal, moral and/or political responsibility for the consequences of their actions, which are always the consequences of a previously made decision (including oral, not made on paper, and which is

[62] Чудик Н. Участь адвоката в адміністративному процесі. Актуальні проблеми правознавства. 2017. Вип. 4. С. 158.

[63] Брайловський І. А. Державно-приватне партнерство: методологія, теорія, механізми розвитку: дис. док. економ. наук : спец. 08.00.01. Донецьк, 2014. 462 с.

[64] Винницький Б., Лендьел М., Онищук Б., Сегварі П. Досвід та перспективи впровадження державно-приватних партнерств в Україні та за кордоном. К.: «К.І.С.», 2008. 55 с.

objectified in the acts) at the level of common consciousness. The relevant special (public power) legal status of members of the collegial public administration subject as a party to administrative proceedings determined by their membership in this body; 4) administrative procedural legal capacity, and, more precisely, its correlation with the collegial way of acts and responsibilities of the subject, its realization with the obligatory participation of a sole representative.

The legal status nature of a "collegial public administration subject as a party to a case in an administrative proceeding" by itself is multi-structural and consists of at least four legal statuses: 1) of the subject of public administration; 2) joint collective work, in fact collegiality; 3) a legal entity or a subject derived from a legal entity; 4) a participant to a court case within the limits specified by the administrative-procedural law.

In all cases of possible involvement of a collegial public administration body by a judge as a subject facilitating the administrative justice or his participation as a party or a third person to a case, this subject does not perform law enforcement, but acts on the principles of dispositiveness with all other subjects of the administrative process.

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16. Шатило О.А. Публічне адміністрування: опорний конспект лекцій. Житомир: ЖДТУ, 2014. 51 с.

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Information about the author:
Tsvirkun Yu. I.
Candidate of Juridical Sciences

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LEVEL OF LEGAL CONSCIOUSNESS OF THE PERSONALITY AS A GUARANTEE OF HUMAN RIGHTS PROTECTION

Shvachka V. Yu.

INTRODUCTION

The development of democratic relations, the formation of public society, law-governed state in Ukraine require the formation of socio-active personality with a high level of legal consciousness and legal culture as well as recognition the law as the main regulator of public relations.

Law as a means of both social regulation of public relations and a component of the subject of the state and law theory has been the object of research of national and foreign law theorists not only once.

Law is a meaningful value for a modern society as well as every person: its influence on the life of the state, society as a whole, every citizen is rather deep and complex; that is why it can not be explained in a simple and one-sided way.

Most of the authors support the normative school of legal thinking, according to which law is considered as a normative and voluntary regulator of public relations, as an internal mutually agreed system of formally defined norms established or authorized by the state, provided by coercive force of the state[1].

Law in 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[2]. In this meaning, law is a social regulator, a certain degree of freedom, based on the achievements of human civilization and culture, serves as a criterion of public

[1] Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В.Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 272.

[2] Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В.Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 240.

usefulness definition (lawfulness) or danger (unlawfulness) of human behavior and their associations[3].

Today, the Ukrainian legal science expands the philosophical understanding of law (V. Selivanov, N. Videnko), according to which law is the set of ethical social values such as justice, order, morality, honesty and others based on the idea of social equality[4].

The transition from a narrow normative understanding of law as the law of authorities to a liberal understanding of law as a measure of freedom, establishing the humanistic value content of law, enriches our understanding of the law and the legal system, promotes the creation of respect for law and lawful conduct, value orientations of society, state and people[5].

Thus, universal human values prevail in the basis of norms of modern law and at the same time, the law is the means by which they are exercised.

In addition, the ability, skills and readiness of a person to uphold their rights and to recognize similar rights for other people are becoming more and more important.

Respect for law as well as its recognition as a main social regulator of public relations is an indicator of a high level of person's legal consciousness, which in turn is a positive result of its legal socialization. A person with a high level of legal consciousness, on the one hand, recognizes their responsibilities to society and on the other hand, knows their rights and does not allow their violation.

Thus, under the legal consciousness one should understand the proper qualitative level of knowledge of law, understanding of its necessity and participation in the internal motivation of acts and actions of the person, achieved in the process of successful legal socialization of the personality.

1. Legal Consciousness of Personality as a Result of Their Legal Socialization

The issue of the concept, content and essence of legal consciousness sparked interest among national and foreign scholars. The essence and

[3] С.Л. Лисенков.Ззагальна теорія держави і права. Навчальний посібник. – К.: «Юрисконсульт», 2006 . – С. 123.

[4] Селиванов В., Діденко Н. Правова природа регулювання суспільних відносин // Право України. – 2000. – № 10. – С. 16.

[5] Правові системи сучасності. Глобалізація. Демократизм. Розвиток / В.С. Журавський, О.В. Зайчук, О.Л. Копиленко, Н.М. Оніщенко; За заг. ред. В.С. Журавського. – К.: Хрінком Інтер, 2003. – С. 63.

significance of legal consciousness was highlighted in the works of well-known pre-revolutionary scholars, including I.O. Ilyin, P.I. Novgrodtsev, B.O. Kistyakovsky. The issues of legal consciousness were considered by the Ukrainian well-known scholars in the works of V.D. Babkin, M.I. Kozyubra, V.V. Kopeichikov, E.V. Nazarenko, N.M. Onishchenko, N.M. Parkhomenko, O.F. Skakun, P.M. Rabinovich, M.V. Zwick et al.

There is a range of definitions of the legal consciousness concept in philosophical and legal literature.

On the one hand, according to N.M. Parkhomenko, a set of ideas, representations, feelings, reflecting the attitude of society to law, its structure, the mechanism of the legal regulation of public relations is understood under the legal consciousness. On the other hand, legal consciousness can be seen as a way of law influence through the consciousness of some individuals on consolidation of the skills of their legal positive behavior[6].

As a rule, legal consciousness is defined as a system of legal representations, feelings, beliefs, emotions, ideas, views, assessments and other manifestations, expressing the subjective attitude of the personality, social group, society as a whole to both a person, current law, existing legal practice, legal status of a person, other legal phenomena, and to the desired law and other desirable legal changes. The same definition is given by the national legal scholar I. Golosnichenko, who considers legal consciousness as a set of representations, views, beliefs, assessments, mood and emotions concerning the attitude of people to the law and state-legal phenomena[7].

The significance of the above definition lies not only in the full scope of the system elements of legal reality reflection, but also in the dynamic approach to determining the issue of legal consciousness. Legal consciousness is not only reflected in the legal categories, concepts, theories, feelings, views of people about legal reality, but also directs the subject of the law to certain changes in the legal environment, predicts and constructs them[8].

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[6] Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В.Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 554.

[7] Голосніченко І. Правосвідомість і правова культура у розбудові Української держави // Право України, 2005, № 4. – С. 24.

[8] Загальна теорія держави і права: Навчальний посібник / МОУ. НПУ ім. М.П. Драгоманова. А.М. Колодій, В.В. Копейчиков та інші. – Стереотипне видання. – Київ: Юрінком Інтер, 1999. – С. 137.

N.M. Onischenko gives the same definition of legal consciousness, in her opinion; legal consciousness reflects the legal reality in the form of legal knowledge and value attitude to the law and practice of its implementation, legal orientations and value orientations governing the behavior (activity) of people in legally significant situations. It is a source of legal activity and an internal regulator of legally significant behavior or a mechanism for its implementation[9]. As O.F. Skakun rightly points out, the key point of legal consciousness is the human awareness of the values of natural law, human rights and freedoms, and the assessment of current law in terms of its conformity with universal human values found in international human rights documents. Legal consciousness not only expresses the attitude of the individual to legal reality, but also directs it to certain changes in the legal environment, predicts and constructs them[10].

The purpose, place and role of legal consciousness in the legal field of public life are determined by the fact that any legal reality is impossible without awareness of its subjects of their actions. This applies to all types of law-making, law enforcement and law protection activities[11].

The meaningful definition of legal consciousness is included in the works by L.I. Spiridonov. According to the scholar, the concept of legal consciousness in modern science means one of the types of public consciousness, reflecting the legal reality. Under the legal reality here is understood not only the law and the legal act, but also the offences of all kinds, offenders themselves, and normative acts and acts of law-enforcement activities, as well as the activity itself[12].

Legal consciousness as a component of a new legal culture of a person, under modern conditions of Ukrainian society development, is characterized, first of all, by new legal thinking, considerable practical interest in law and legal institutions, changing the attitude to law as a mechanism for the non-conflict realization of their interests, the law has acquired specific features and values for everyone.

At the same time, the current socio-cultural situation in Ukraine is such that these processes are not supported by a legal tradition, both in public and in individual legal consciousness; law is a doubtful value. With

[9] ОніщенкоН.М. Правова система: проблеми теорії: Монографія. – К.: Ін-т держави і права ім. В.М. Корецького НАН України, 2002. – С. 68.

[10] Скакун О.Ф. Теорія держави і права. – К.: Алерта, 2013. – 524 с.

[11] Лисенков С.Л. Загальна теорія держави і права. – К.: «Юрисконсульт», 2006. – С. 180.

[12] Спиридонов Л.И. Теория государства и права.Учебник. – м.: ПБОЮЛ М.А.Захаров, 2001. С. 122.

the renewal of legislation and accumulation of relevant law enforcement practices, the gap between the new democratic legislation and the low level of legal consciousness is getting increasingly obvious[13].

Considering the legal consciousness as a means by which the interaction of a person with law, legal act is carried out, and through them – with the economic, political situations, environment, living conditions, life, etc., V.V. Golovchenko notes that its formation is carried out not only (and, perhaps, not so much) by normative-legal acts, not so much under the influence of purely legal practice, but due to the action of new trends in the field of economy, politics, and morality. It is these tendencies that are the driving forces stimulating a person to a new legal thinking[14]. In this case, the subjective-mental environment, reflecting the attitude of people to the law, is essential, and the quintessence of legal consciousness is the human awareness of law value and, at the same time, the belief in a current positive law, of how much it meets the requirements of mind and justice, legal values, and ideals[15].

Today, the formation of legal consciousness in Ukraine is taking place in the acute struggle of new legal thinking with the old one, which creates a complex ideological and political-legal problem, requiring new approaches in the formation of goals, tasks of legal socialization of the personality and a search for new means and ways of its implementation. The formation of legal consciousness as a positive result of legal socialization of personality and overcoming of prevailing legal nihilism should become one of the priority directions of state policy.

Legal consciousness as a form of social consciousness obeys its general laws of formation and functioning. At the same time, the legal consciousness has its own specificity, which distinguishes it from other forms of consciousness and manifests itself in the subject of reflection, as well as in its special concepts and categories. They include the categories of legal rights and obligations, “lawfulness”, “unlawfulness”, “legal relations”, “legal capacity”, as well as “legitimacy”, etc. Based on these categories, legal consciousness reflects an assessment of behavior of law

[13] Вступ до теорії правових систем / НАН України; Інститут держави і права ім. В.М. Корецького / Олег Володимирович Зайчук (заг.ред.), Наталія Миколаївна Оніщенко (заг.ред.). – К. : Юридична думка, 2006. – С. 146.

[14] Головченко В.В. Деякі тенденції розвитку масової правосвідомості // Правова держава, 1994. Вип. 5. – С. 76.

[15] Державотворення і право творення в Україні: досвід, проблеми, перспективи / За ред. Ю.С. Шемшученка: Монографія. – К.: Ін-т держави і права ім.. В.М. Корецького, 2001. – С. 329.

subjects as lawful or unlawful[16]. It is the establishment and strengthening of the legitimacy that is one of the manifestations of legal consciousness. The subject of its reflection is the law and legal regulation as a whole, as well as public relations, regulated by law or those that require legal regulation.

According to N.M. Onishchenko, the specificity of legal consciousness is expressed in the prediction of public-obligatory behavior, justifying the need to establish legal rights and obligations of participants in public relations[17].

Legal consciousness is a complex structured institution. Its structure manifests itself in the form of certain interconnected elements and institutions. The distinction of structural elements in the legal consciousness contributes facilitates the clarification of its place and role in society.

In scientific literature the structure of legal consciousness (as any type of public consciousness) is studied in the various aspects.

Using different approaches to studying the structure of legal consciousness, scientists rather often give preference to one or another element. Some authors focus on its cognitive and evaluative aspects and consider the volitional aspect of legal consciousness as a consequence of these two parts. In the concept of other authors, cognitive and evaluation features go to the background, and the focus is on the volitional side, the active influence of legal consciousness on the law. The factors mentioned are really the elements, components of legal consciousness. It can be mentioned that these factors or elements of legal consciousness include certain independence in relation to each other. At the same time, their boundaries are very conditional.

In fact, it is difficult to draw a line between the cognitive and evaluative sides of legal consciousness. Passive cognition is not possible by itself, since, as a rule, it is associated with the evaluation of any particular fact or behavior. Although the relation between the cognitive, evaluative and volitional sides of cognition is variable and relative, they can still be distinguished, guided by the nature of their relations with the

[16] . Соціологія права: Підручник для студентів юрид. Спец. Вищих навчальних закладів / За ред. Н.П. Осипової. – К.: Концерн „Видавничий дім „Ін Юре”, 2003. – с.157.

[17] Горбунова Л.М., Оніщенко Н.М., Копієвська О.Р. Методика правової освіти. – К.: Атака-Н, 2005. С. 5.

legal system, and then with the law in an even more general form[18]. We will discuss each of them in more detail later. The structure of legal consciousness can be considered in several aspects, in particular, in axiological (evaluative) and structural-functional.

The axiological aspect of determining the structure of legal consciousness proceeds from the fact that the value of law in satisfying the needs of the subject is the subject of a peculiar cognitive (evaluative) activity, the results of which are reflected and recorded in the minds of the personality in the form of evaluations. Evaluation in the general form is an intellectual (rational) and sensory (emotional) reaction of the subject to the determination of the role and significance of a particular object, both for themselves, and for others.

In the axiological aspect, legal consciousness is a reflection of the cognitive (evaluative) activity of the subject, the result of which is the consolidation of certain legal knowledge in person's mind, as well as assessment of law and various legal phenomena. In this aspect, in the structure of legal consciousness, as a rule, two elements are distinguished: legal ideology and legal psychology[19].

Legal ideology is a system of legal ideas, theories, concepts, norms, views, based on certain scientific and political knowledge and representations[20]. Legal ideology is a rational element of legal consciousness, formed as a result of scientific, theoretical reflection of legal reality, based on generalization and development of the most famous and significant state-legal theories of the past and the present, the study of basic patterns of attitudes, development and functioning of state and law, their role in the life of society.

Thus, the formation of legal ideology is a goal-oriented process of theoretical understanding of interests, goals and tasks of society, state, personality, the leading element of which is intelligence.

Legal ideology substantiates and evaluates the established or predicted legal relations, the role of law, legitimacy and law order. In the

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[18] Имбре Само.Основы теории права. Перевод с венгерского под.ред. В.А.Туманова. М., 1974, С. 210-211.

[19] Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В.Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 557.

Лисенков С.Л. Загальна теорія держави і права. – К.: «Юрисконсульт», 2006. – С. 181.

Правові системи сучвсності. глобалізація. демократія. розвиток.

[20] Юридична енциклопедія: В 6 т./ Редкол.: Ю.С. Шемшученко (голова редкол.) та ін. – К.: «Укр. енцикл.», 2001. – Т. 2. – С. 658.

development of legal ideology, scientists, practitioners, politicians and other specialists take part, taking into account the specific historical living conditions of a society, its economic conditions, demographic processes, the level of public consciousness, the mood and interests of different social groups, the dynamics of offences and other factors. In essence, it is about the formation of legal consciousness at the theoretical level, which involves professionals.

Modern legal ideology in the opinion of S.L. Lysenkov includes, in particular: the concept of division of powers; the recognition of priority of universal human values over the interests of certain segments of society and, accordingly, the domination of generally accepted norms of international law over the norms of national law; the theories of law-governed state and civil society; the principles of democracy, humanism, non-alienation of natural human rights, etc[21].

The second element of legal consciousness is an emotional-structural element that is called legal psychology.

Legal psychology covers a set of legal feelings, values relations, moods, desires and experiences that are typical of the personality, society as a whole or a specific social group[22].

Legal psychology in contrast to the rational formation of legal ideology is formed spontaneously based on empirical direct reflection of legal behavior of legal relation subjects in the form of public opinion, experiences, feelings, emotions, assessments, etc[23].

In the opinion of O.F. Skakun, it is not a conscious or not fully realized attitude towards the law, legal phenomena, which is a legal consciousness that comes from everyday practice in the process of meeting with specific legal situations, and therefore is formed in the most part spontaneously, sporadically, unsystematically, that is, legal psychology is not comprehended theoretically, not ordered logically[24].

The emergence and existence of legal psychology is associated, first of all, with the natural inclusion of emotions in the human consciousness structure and with a direct sensory reflection of the legal environment,

[21] Лисенков С.Л. Загальна теорія держави і права. – К.: «Юрисконсульт», 2006. – с. 181.

[22] Правові системи сучвсності. Глобалізація. Демократизм. Розвиток / В.С. Журавський, О.В. Зайчук, О.Л. Копиленко, Н.М. Оніщенко; За заг. ред. В.С. Журавського. – К.: Юрінком Інтер, 2003. – С. 58

[23] Загальна теорія держави і права: Навчальний посібник / МОУ. НПУ ім. М.П. Драгоманова. А.М. Колодій, В.В. Копейчиков та інші. – Стереотипне видання. – Київ: Юрінком Інтер, 1999. – С. 138.

[24] Скакун О.Ф. Теорія держави і права. – К.: Алерта, 2013. – С. 462.

emotional response to external legal phenomena relating to them. Emotional coloring, whether positive or negative, substantially affects the nature and direction of person's behavior, including in the field of legal relations. That is why legal psychology is considered as a reflection of direct experience of people's participation in legal relations, practical participation in the legal field of society life. Legal psychology is a practical legal consciousness, based on legal feelings, and experiences, it is associated with elementary knowledge of legal facts, phenomena, their evaluation, manifested both in legal feelings, and in legal skills and habits.

In this regard, the national legal scholar S. L. Lysenkov distinguishes the complex structure of legal psychology separating the following elements inside it: stable (legal customs, traditions, habits) and dynamic (mood, feelings, experiences); cognitive (legal empirical knowledge, beliefs, views) and emotional (legal emotions, feelings, mood); regulatory (legal habits, traditions, customs)[25].

Legal ideology and legal psychology as elements of legal consciousness are closely interrelated. Legal ideology enriches legal psychology with value-normative orientations, and legal psychology is the only source for the formation of legal norms, since, unlike legal ideology, it is more mobile: it responds quickly to changes taking place in legal practice, reflected in mood, feelings, and views, which, in turn, directly affect the human perception of legal changes[26].

Taking into account, that in the context of this study a high level of legal consciousness is considered as a positive result of legal socialization of the personality in the process of formation of their active socio-legal position deserves the attention of O.F. Skakun's opinion about the distinguishing of the third element in the structure of legal consciousness, namely, legal behavior. Legal behavior, as a volitional side of legal consciousness, represents the process of transferring legal norms into real legal behavior. Behavioral element of legal consciousness synthesizes rational and emotional aspects. The implementation of psychological and ideological elements takes place through it[27].

[25] Лисенков С.Л. Загальна теорія держави і права. – К.: «Юрисконсульт», 2006. – С. 182.

[26] Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В.Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 558.

[27] Скакун О.Ф. Теорія держави і права. – К.: Алерта, 2013. – С. 464.

Thus, the level of legal consciousness precisely depends on its behavioral element, which can manifest itself in lawful behavior, legal activity, offence, etc.

In the process of research of legal consciousness and its structure in the context of legal socialization of the personality, the structural-functional aspect of its consideration deserves special attention.

Growing up, a person experiences some influence of the environment and special legal education, as well as increasingly enters into the practice of social, including legal communication, becomes conscious participant in various relations, and, consequently, the requirements for their legal socialization are increasing, and new tasks are arising, which, in turn, are related to the definition of structure, functions and the process of formation and development of their legal consciousness.

In the process of legal socialization the idea of law and its significance in everyday life are formed in person's mind. This occurs through the influence of various life circumstances on a person, including the environment and legal-educational influence; and as a result a person not only aware of them, but also there are relevant emotions in person's consciousness as well as own attitude towards them.

Thus, patterns of behavior, which at first are external to the subject, are gradually becoming its internal, subjective, internalized actions. And only then they are supported and ensured, first of all, by the internal conviction and the will of the personality.

This way, the level of legal consciousness, which is the result of legal socialization, influences the person's attitude to law, its role and meaning in person's everyday life. The higher the level of legal consciousness, the more stable the legal convictions of the personality, the more they regulate their behavior in accordance with the goals and tasks expressed in law.

It is the structural-functional approach in the study of legal consciousness that makes it possible to distinguish three groups of its functions: cognitive, evaluation, regulatory.

Cognitive functions of legal consciousness are provided by knowledge of law. The evaluation functions correspond to the system of views on legal issues (attitude to law). The action of regulatory functions consists in legal orientations, guidelines and skills of legal behavior[28].

[28] Социальные отклонения. Введение в общую теорию. – М.: Юрид. лит., 1984. – С. 182.

Some authors define the main functional elements of legal consciousness in accordance with the functions defined above:[29] cognitive (informational), evaluative and regulatory (volitional).

Cognitive activity corresponds to a certain amount of legal knowledge (ideas, categories, views, etc.) that is the result of intellectual activity and is expressed in the concept of "legal training".

Cognizing the legal reality, a person does not remain indifferent to the knowledge gained. Knowledge always causes a person's attitude towards them, that is, they are evaluated.

The evaluative function determines a person's emotional attitude to different legal phenomena on the basis of received legal knowledge, own experience and legal practice. As a result of evaluation activity of the objects of legal cognition and legal reality, emotional ideas, so-called "evaluative considerations" are formed in the personality. At the same time, the presence of views and considerations in the personality as a result of cognitive and evaluation activities in relation to the law, various legal phenomena and practices of its application, does not indicate the readiness of the person to implement them in practice. The decisive role in ensuring the lawful behavior of a person through the practical implementation of value orientations is given to intellectual-emotional-volitional institutions, the so-called legal guidelines, formed with the participation of the person's will.

Legal guideline is the readiness, the personality's inclination to perceive and evaluate any legal object in a certain way and act in relation to it in accordance with this evaluation[30]. It is a specific program of behavior under the certain conditions, which is formed from all the relevant subjects of legal (lawful and unlawful) knowledge, evaluations, thoughts, mood, habits, skills, expectations, attitudes to anyone or anything that turn into interests and aspirations.

Dominant legal guidelines determine the life attitude of the personality and characterize the content of their value-legal orientations. The set of such guidelines forms the value-legal orientation of the personality. Accordingly, legal orientation is a set of legal guidelines of a

[29] Правовое воспитание молодежи / Н.И. Козюбра, В.В. Оксамытный, П.М. Рабинович и др. Отв. ред. Н.И. Козюбра. – К.: Наукова думка, 1985. – С. 16.; Соціологія права: Підручник для студентів юрид. Спец. Вищих навчальних закладів / За ред. Н.П. Осипової. – К.: Концерн «Видавничий дім «Ін Юре»0, 2003. – С. 304;. Скакун О.Ф. Теорія держави і права. – К.: Алерта, 2013. – С. 467.

[30] Правовое воспитание молодежи / Н.И. Козюбра, В.В. Оксамытный, П.М. Рабинович и др. Отв. ред. Н.И. Козюбра. – К.: Наукова думка, 1985. – С.16.

personality or community (group, association) that directly forms an internal plan, a program of activities in legally significant situations.[31]

It is the regulatory function of legal consciousness that is implemented through legal systems and value-legal orientations, synthesizing all other sources of legal activity. The result of such regulation is a behavioral reaction in the form of lawful or unlawful behavior[32].

Functional structure of legal consciousness

Basic functions of legal consciousness	Mental components	Function results	Empirical indexes
Cognitive	Intellectual	Legal training	Law knowledge and skills of using it
Evaluative	Intellectual-emotional	Value attitude to law and its implementation practice	evaluation consideration (views)
Regulatory	Intellectual-emotional-volitional	Legal guidelines and orientations	Behavioral attitude (decision)

Taking into account the above mentioned, in the author's opinion, the structure of legal consciousness given by national scholars, namely V. V. Kopeychykov and O. F. Skakun is the most successful, who, using the structural-functional approach, distinguish its three components: legal knowledge, legal evaluations and legal guidelines[33]. Each element of the structure of legal consciousness corresponds to its basic functions, which, in turn, are equally important for the process of legal socialization of the personality and are implemented step-by-step one after another.

Therefore, it is precisely in the process of implementing cognitive functions that a certain system of legal knowledge is formed in the person's mind, which is the primary element of its structure. Later on, the evaluation of the acquired legal knowledge is carried out, a certain

[31] Соціологія права: Підручник для студентів юрид. Спец. Вищих навчальних закладів / За ред. Н.П. Осипової. – К.: Концерн «Видавничий дім «Ін Юре», 2003. – С. 165).

[32] Каминская В.И, Ратинов А.Р. Правосознание как элемент правовой культуры//Правовая культура и вопросы правового воспитания. М., 1974. – С. 87.

[33] Загальна теорія держави і права: Навчальний посібник / МОУ. НПУ ім. М.П. Драгоманова. А.М. Колодій, В.В. Копейчиков та інші. – Стереотипне видання. – Київ: Юрінком Інтер, 1999. – С. 139.

Скакун О.Ф. Теорія держави і права. – К.: Алерта, 2013. – С. 467.

attitude of the person is formed to it, a selective inclusion of it in their inner world, knowledge becomes person's own convictions, the so-called "standards of behavior", leading to the emergence of the second element of legal consciousness such as legal evaluations.

At the same time, legal consciousness is not a set of knowledge about law or reflection of a person's fixed attitude to it, because it not only reflects the legal reality, but also changes it through active legal behavior of the subject. This, in turn, explains the distinguishing of the third element of the legal consciousness structure, namely, legal guidelines, which are the result of its regulatory function. Regulatory function of legal consciousness is realized through the will of the person, their psychological peculiarities and ensures active legal behavior of the personality in everyday life. It is the active legal behavior of the personality that is manifestation of a higher level of their legal consciousness, which should be the main goal of legal socialization of the personality.

Diverse social communities, individuals and society as a whole are real bearers of legal consciousness, which makes it possible to divide it conditionally into three types: public, group (collective) and individual legal consciousness. The study of the nature of relations and interaction of which makes it possible to determine the place and role of legal consciousness in the process of legal socialization of the personality.

Only the answer to specific questions: whether the legal consciousness of society consists of the set of the legal consciousness of certain individuals; if public legal consciousness is the basis of formation of individual legal consciousness, will provide an opportunity to determine their real correlation.

In L.I. Spiridonov's opinion, if we consider society as a set of individuals, then, of course, individual legal consciousness precedes public legal consciousness.

At the same time, in the real world, when coming to life, the person automatically enters the society that is already formed with a certain level of public consciousness, including legal, and person has the only power to enter into a given society and occupy one of those places in it. From this point of view, public relations precede certain individuals, and therefore, the public consciousness precedes the consciousness of individuals, created before them and is perceived by them in the process of their

socialization. This, in turn, confirms the fact that the legal consciousness, as well as the public consciousness as a whole, is an objective fact, a relatively independent social phenomenon which in general is not reduced to the amount of individual legal consciousnesses[34].

This is due to the fact that in the individual legal consciousness the common features are combined that are inherent in the legal consciousness of a single epoch, together with the special features associated with the person's belonging to a particular social group, and the individual features, resulted from person's education and circumstances of personal life[35].

Supporting the opinion that public legal consciousness is not a mathematical amount of individual legal consciousness, it should be noted at the same time that in our opinion, the legal consciousness of a particular individual also has a certain impact on the level and content of public legal consciousness in the process of his active legal activity.

So, indeed, public legal consciousness contains legal ideas, views, theories, which are common in the given society and reflect the typical features of its legal reality. It is objectified in the form of existing legislation, the system of law, law order, and the rule of law, legal culture and ideology. Consequently, the public legal consciousness can manifest itself in forms that do not exist and can not exist in the minds of certain people.

At the same time, all forms of manifestation of public legal consciousness in the course of their existence are influenced by the legal consciousness of certain individuals, which eventually undergoes certain changes. No doubt, the influence of social legal consciousness on the individual legal consciousness is much greater and is carried out through its concretization in the legal consciousness of certain social groups or groups directly surrounding the environment of the person. It gives grounds for asserting that individual legal consciousness is the result of the socialization of a certain person as well as person's assimilation of the group and public consciousness, mediated by the peculiarities of their life path. Collective forms of consciousness, plus personal experience – this is what creates the basis for perceiving the legal reality of each unique personality[36].

[34] Спиридонов Л.И. Теория государства и права. М., 2001. – С.122-123
[35] Покровский И.Ф. Формирование правосознания личности. Л., 1972. – С. 42.
[36] Спиридонов Л.И. Теория государства и права. М., 2001. – С. 127.

Individual legal consciousness reflects the conditions of life of a particular person, the legal relations to which they are involved and the carrier of which this person is. Individual legal consciousness as a consciousness, not isolated from society, is always in one way or another covered by public consciousness and in this sense it can not be completely individual. Individual legal consciousness correlates with the collective as a part and a whole. Collective, public and individual legal consciousness interact with each other, but do not merge and do not coincide. Collective legal consciousness is a form of public consciousness and is not limited to a simple arithmetic amount of individual views, but also does not oppose the legal consciousness of individuals[37].

Thus, one can speak of the deep dialectical unity of such subjects of legal consciousness as personality, group and society as a whole. Outside the public legal consciousness there is no and can not be the individual legal consciousness of the personality. At the same time, the high development of individual legal consciousness has an influence on the formation of public legal consciousness in general.

The reflection of the legal phenomena of reality by individual legal consciousness is rather specific. The subject's perception of the environment depends on many factors that can involve: the place of the person in the structure of social and interpersonal relationships, the extent of satisfaction of own interests, the quality of their life, and their available life experience, the possibility of realizing their creative potential, etc.

Determination of the place of reality legal phenomena in the system of person's values is carried out only in case of mandatory participation in the evaluation process of all these factors. And, first of all, the value of law for a personality is resulted from the value of the personality for law – these phenomena are interrelated. Therefore, an inadequate low place of personality in the hierarchy of legal values reduces the "socializing effect" of legal means. The strictness of sanctions and intimidation does not solve the problem of socialization, because it does not contribute to the formation of a culture in individual legal consciousness, a respectful attitude to law and other subjects of social interaction. On the contrary, it is important to consolidate the legal system of the legal status of the personality and society as equal subjects.

[37] Методологические проблемы правосознания сотрудников внутренних дел. Л., 1986., С. 35-36.

The path to this goal lies only through the construction of a law-governed state and a civil society, in which appropriate conditions will be created enabling personality to gain freedom of choice and the opportunity, using legal means, to resolve their own life-situations, as well as the proper place will be given to higher moral values of a person[38].

2. The Peculiarity of Legal Consciousness Formation in Ukraine

Considering legal consciousness as the result of legal socialization, it is necessary to pay attention to the historical aspect of legal consciousness formation of the Ukrainian people, since the law of the past time does not disappear without a trace, but continues to exist under the new conditions as an inherited legal culture. The rich historical past of our country has had a decisive influence on the content of legal consciousness of the present.

The peculiarity of legal consciousness formation in Ukraine lies in the fact that due to historical circumstances it has been in the field of influence of two cultures: the Western and the Eastern ones, which overlapped each other[39]. For centuries, this or that part of the territory of Ukraine was influenced by different empires – Polish, Lithuanian, Austro-Hungarian and Russian, which left its imprint on the legal consciousness and legal culture of the Ukrainian people and resulted in its regional character.

As Y. Vaskovich notes, the law in the Western countries has a universal mandatory nature, equates everyone and everything, guarantees each person the inalienable rights and defines their duties. Law is the most significant social value there. All social groups and government structures are forced to exist and achieve their goal within the law.

In the Eastern countries, the hierarchy was based on social regulation for many years, that is, the law served the authorities. Here, power is perceived as a necessary need, an embodiment of will. Law-making is directed only from top to bottom, and the source of law is the power, that is beyond and above the law and is not subject to moral evaluation[40].

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[38] Хропанюк В.Н. Теорія государства и права. М., 1993. – С. 57; Оніщенко Н. М. Правова система: проблеми теорії / Інститут держави і права ім. В.М. Корецького НАН України. – К. : Ін-т держави і права ім. В.М. Корецького, 2002. – С. 69.

[39] Васькович Й. Правосвідомість та її вплив на менталітет українського народу. // Право України.– 1998. – № 6. – С. 108-111, С. 109.

[40] Васькович Й. Правосвідомість та її вплив на менталітет українського народу. // Право України.– 1998. – № 6 – С. 108-111, С. 109.

The formation of Ukrainian statehood depended to a certain extent on the influence of Russian culture and legal thought. One of the common features of Russian pre-revolutionary legal thought was either a neglect attitude to law, or its complete defiance and idealization of the moral and religious factor. It was said not in vain a long time ago: people always ruled in Russ', but not laws[41].

Unlike Western countries, where public relations was based on the recognition of the subjective rights and freedoms of a person as an achievement of human civilization for many centuries, public legal consciousness in Russia, including the legal consciousness of the vast majority of intellectuals, was never interested in the ideas of human rights, and the content of law was never associated with the categories of freedom, equality, and justice[42]. Law was not considered as an integral part of universal human culture, as a means of social regulation of public relations.

Ukraine's being in the Soviet Union with the command-and-control system of government also did not contribute to strengthening the authority of law, but, on the contrary, the law had a declarative nature and was used exclusively as a means of coercion in the hands of the ruling elite.

Thus, the Ukrainian people were taught to fear the law for hundreds of years, and not to respect and adhere to its demands, which gave rise to mass legal nihilism, which, in turn, was the evidence of a low level of legal culture and legal consciousness of people.

The proclamation of the independence of Ukraine, the change in the system of values of Ukrainian society is accompanied by a crisis of people's legal consciousness, which is a significant obstacle to the development of a law-governed state.

Well-known lawyer and philosopher P.I. Novgorodtsev, referring to the crisis of legal consciousness, linked it with changes in political and legal beliefs and attitudes, with the exaggeration of the role and importance of the idea of a law-governed state, with the positive laws moving behind the movement of history. As a consequence of this, in his

[41] Матузов Н.И. Правовой нигилизм и правовой идеализм, как две стороны «одной медали» // Правоведение. 1994, № 2.– С. 8-16. – С. 10.

[42] Козюбра М.І. Творчий доробок М. Драгоманова. // Драгомаівський збірник. «Вільна спілка» та сучасний український конституціоналізм. За ред. Т.Г. Андрусика. Львів, 1996. – С. 90-96. – С. 92.

opinion, conflicts arise constantly and inevitably between the old order and new progressive aspirations in a life[43].

The crisis phenomena taking place in the economic, social life could not help influencing the level of legal consciousness of a person in Ukraine. It is under their influence that the younger generation is largely educated in an atmosphere of spiritual impoverishment, desolation, heartlessness, immorality, and disrespect for their parents, disbelief in the future. The uncritical transfer of doubtful values and moral norms of modern mass culture of the Western world to our own national background has greatly deformed consciousness, people's psychology[44].

As a result of analysis of the person's legal consciousness level at the present stage of development of Ukrainian society, one can conclude that with declaration of Ukrainian independence, rejection of authoritarian methods of government, implementation of the constitutional idea of the supremacy of law, there has been a real possibility of developing Ukraine as a united integral law-governed state with the democratic principles of governance and formation of a proper level of legal consciousness and legal culture of citizens.

In order to achieve this goal, it is necessary, first of all, as I.O. Illin noted, to do everything "to bring the law to the people to consolidate the public legal consciousness, so that people understand, know and appreciate their laws, so they voluntarily adhere to their duties and prohibitions and loyally use their powers. Law must become a factor of life, a measure of real behavior, the power of the people's soul"[45].

N.M. Parkhomenko defines the following ways of forming a legal consciousness: involving the wider population in law-making activity through the development of institutes of direct (immediate) and representative (referendums, public interviews) of democracy, aimed at understanding the content of legal acts, the reasons for their adoption and proper implementation; legal propaganda; correct implementation of legal norms by state authorities, state enterprises and institutions (ensuring this condition is a clear and effective activity of the employees of internal affairs bodies, prosecutors, raising the level of their legal culture); the

[43] Новгородцев П.И. Введение в философию права. Кризиссовременного правосознания. – М., 1909. – С. 20, всего 265.

[44] В. Головченко, А. Потьомкін Правові механізми формування правосвідомості судентів// Право України, 2006, № 4 – С. 100.

[45] Ильин И.А. О сущности правосознания. // Теория государства и права. Под. ред. д.ю.н., проф. В.А. Томсинова. – М.: Издательство «Зерцало», 2003.– 400 с. – С. 176.

protection of constitutional rights and freedoms of a person and citizen by the authorized bodies of state power[46].

CONCLUSIONS

The high level of legal consciousness of a person expressed in their active socio-legal attitude is achieved as a result of a successful combination of purposeful and spontaneous means of legal socialization, taking into account real life conditions, historical preconditions for their formation, social status of the person, level of general and legal culture of society, legal-educational work and person's individual capabilities.

The legal consciousness of a personality is a proper qualitative level of knowledge of law, recognition of its higher social value, understanding of its necessity and participation in the internal motivation of actions and acts of a person, achieved in the process of person's successful legal socialization.

The higher the level of legal consciousness, the more persistent the legal convictions of the personality, the more often they determine their behavior in accordance with the goals and tasks expressed in law. At the same time, the high level of development of legal consciousness of the personality has an influence on the formation of public legal consciousness in general. That, in turn, promotes the implementation and functioning of real human rights protection mechanisms.

SUMMARY

The issue of the concept, content and essence of legal consciousness is considered. It is determined that under the legal consciousness one should understand the proper qualitative level of law knowledge, understanding of its necessity and participation in the internal motivation of actions and acts of the person, achieved in the process of successful legal socialization of the personality.

Respect for law as well as its recognition as a main social regulator of public relations is an indicator of a high level of person's legal consciousness, which in turn is a positive result of their legal socialization. A person with a high level of legal consciousness, on the

[46] Теорія держави і права. Академічний курс: Підручник для студентів юридичних спеціальностей вищих навчальних закладів / МОНУ; За ред. О.В.Зайчука, Н.М. Оніщенко; Авт.: Зайчук О.В., Заєць А.П., Копиленко О.Л., Оніщенко Н.М. та ін. – Київ: Юрінком Інтер, 2008. – С. 555.

one hand, recognizes their duties to society, and on the other hand, they know their rights and do not allow their violation.

Today, the formation of legal consciousness in Ukraine is taking place in the keen struggle of new legal thinking with the old one, creating a complex ideological and political-legal problem, which requires new approaches in forming the goals, tasks of legal socialization of the personality and the search for new means and ways of its implementation.

Different approaches to the study of the legal consciousness structure are analyzed and its main functions are determined.

The deep dialectical unity of such legal consciousness subjects as personality, group and society as a whole is studied. Outside the public legal consciousness there is no and it can not be the individual legal consciousness of the personality. At the same time, the high development of individual legal consciousness of the personality has an influence on the formation of public legal consciousness in general.

It is established that the higher the level of legal consciousness, the more persistent the legal convictions of the personality, the more often they determine their behavior in accordance with the goals and tasks expressed in law. At the same time, the high level of development of legal consciousness of the personality has an influence on the formation of public legal consciousness in general. That, in turn, promotes the implementation and functioning of real human rights protection mechanisms.

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Information about the author:
Shvachka V. Yu.
Candidate of Judicial Sciences,
Assistant Professor

CONCLUSIONS

A person, his or her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine (Article 3 of the Constitution of Ukraine), such rights are consolidated in current international treaties, the consent for binding nature of which is given by the Verkhovna Rada of Ukraine and which are a part of national legislation of Ukraine (Article 9 of the Constitution of Ukraine). Human and civil rights, their scope and assurance are the indicators of person's actual and legal status in the society.

That is why the principle of the priority of human rights and freedoms, their recognition of the highest values, assurance and their proper provision is the basis for any law-governed state creation. In particular, Article 55 of the Constitution of Ukraine provides the right of every person to protect his or her rights and freedoms by any legal means against violations and unlawful infringements. Such rights can be limited only in cases directly provided by the Constitution of Ukraine with a specific aim, namely: - to protect human life and property; - to prevent crime and to suspension; - to ensure interests of national security, territorial integrity, public order, economic wealth; - to provide health care and morality of people, to protect reputation or rights and freedoms of other people; – to prevent information disclosure obtained confidentially.

Therefore, the issues collected, systematized and generalized in the given work are urgent for the group of authors of the present monograph and other scientists and practitioners in the field of law, political science, sociology, philosophy, namely: the detailed and comprehensive research of the socio-legal phenomena and uncovering of its scientific features; exercise of human rights and freedoms by creating proper conditions in the state and society; human understanding of own rights and freedoms as well as the possibility of the application of legal methods and means of their protection against violation, claims from the state and individual members of society.

NOTES

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