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INTELLIGENCE FUNCTION OF OPERATIVELY-SEARCH ACTIVITIES OF THE UKRAINIAN NATIONAL POLICE: QUESTIONS OF CONCEPTUALIZATION AND PROCDUALIZATION

Albul S. V.

INTRODUCTION

Political and social processes which taking place in Ukraine, accelerated criminalization of the society, which can be seen, first of all, in changes of quantitative and qualitative characteristics of crimes, consolidation of criminal underground and expanding of its sphere of influence on society, destruction or deformation of basic governmental and social institutions, marginalization of the citizens, formation of legislative skepticism and mass anomia and loss of social values as a consequence. At the same time, European choice of Ukraine calling for creation and implementation of innovative approach to theory and practice of the law enforcement and legislative practices. Contemporary organized crimes influencing many global social-economic processes like urbanization, international and regional migrations, formation of the worldwide informational-cultural space, and one of the characteristics of organized criminal organizations is relatively high level of organization, strong corruptive and international criminal connections[1].

Ever increasing level of organization and professionalism of crimes, their technical capabilities, creation and strengthening of immunity of criminal elements to traditional methods and practices of operatively-search activities, well developed corruption connections, promotes conversion of criminal groups into highly organized entities, with well-developed infrastructure. From this viewpoint raises necessity for studying international practices of police activities related to counteractivities to various crimes and especially to organized ones.

[1] Дрёмин В. Н. Преступность как социальная практика: институциональная теория криминализации общества : монография. Одесса : Юридична література. 2009. С. 37.

Creation of contemporary counteractivities to organized crimes calling for new approaches to developing, analytical processing and usage of operatively-search information, which was procured by many means including those of operative and operatively-technological with the goal of timely prevention, detection and neutralization of real and potential threats to national interests of Ukraine[2]. All divisions of National police will be required to actively use, inside the guidelines of current law, clandestine methods of operatively-search activities and specific means of obtaining operating information, documented facts of unlawful activities etc., one of which represents realization of intelligence function of operatively-search activities of the National police.

Particular problems of organization and tactical realization of intelligence function of operatively-search activities was highlighted in articles of the following scientists: I.G. Basetsky, A.S. Vandishev, M.P. Vod'ko, A.F. Volinsky, D.V. Grebelsky, I.G. Grichanin, L.M. Kalinkovich, V.A. Lukashov, S.S. Ovchinsky, V.G. Samoilov, V.A. Samohin, V.V. Sergeyev and others. Following scientists was studying psychological aspects of these activities: B.E. Baranenko, V.A. Cherepanov, U.V. Chufarovskij and others. In their research, contemporary scientists like: M.I. Anufriev, O.M. Bandurka, G.M. Birukov, O.U. Busol, M.L. Gribov, E.O. Didorenko, O.F. Dolzhenkov, V.P. Zaharov, I.P. Kozachenko, Y.U. Kondratiev, O.E. Koristin, V.A. Nekrasov, D.J. Nikiforchuk, M.M. Perepelisa, S.I. Pichkurenko, M.A. Pogoretsky, E.V. Ryzhkov, M.B. Saakjan, I.V. Servetskiy, V.E. Tarasenko, V.V. Shendrik, I.R. Shinkaretko and others, studied only some aspects of organization and tactics of realization of intelligence function of operatively-search activities of the National police. Furthermore, we must point out the fact, that comprehensive monographic studies of common-theoretical, legislative and organizationally-tactical principles of realization of intelligence function of operatively-search activities of the National police of Ukraine was not conducted until now. Realization of the situation today happens under conditions of forming of the new paradigm of operatively-search

[2] Albul S. V. Criminal Intelligence as a Function of Operatively-Search Activity: European Experience and Ukrainian Prospects). *European Reforms Bulletin: international scientific peer-reviewed journal.* Grand Duchy of Luxembourg, 2015. № 2. P. 4.

activities, and many issues will require fundamentally new scientific research, especially in the area of conceptualization and establishing procedures for such activities.

1. Essence of Intelligence Function of Operatively-Search Activities of the National Police of Ukraine

As of today, there is no unified vision for recognizing intelligence function of operatively-search activities of the National police. Scientific foundation for clearly defining directions and ways to recognize intelligence function of operatively-search activities of the National police are also absent. There are no studies of intelligence function of operatively-search activities of the National police from the viewpoint of specific activities, synergetic and epistemological approaches, and their information-predictive essence.

As of today this function of operatively-search activities quite clearly defined in legislative norms at different levels and numerous branches, such as Criminal and Criminal-procedural codes of Ukraine, Ukrainian laws «About National police», «About operatively-search activities», «About organizationally-legislative basis of fighting organized crime», a series of departmental and inter-departmental normative acts, and in particular joint act of the office of Prosecutor's General of Ukraine, MIA of Ukraine, SS of Ukraine, Ukrainian Ministry of finance, Ukrainian border protection Administration, Ministry of Justice from 16.11.2012 № 114/1042/516/1199/936/1687/5 «About organization and execution of investigative (search) actions and using results in criminal proceedings» etc. Current Ukrainian law «About operatively-search activities», which acts as basis for forming directions for operatively-search activities, suggests that «operatively-search activities is a system of open and secret search, intelligence and counter-intelligence means which performed by means of operative and operatively-technological activities»[3]. This law establishes comprehensive list of state's bodies, which have rights to perform operatively-search activities. At first glance, logic-semantics analysis of the norms of above mentioned Law, gives us an opportunity to confirm

[3] Про оперативно-розшукову діяльність : Закон України від 18.02.1992 р. № 2135-XII. Дата оновлення: 17.04.2019. URL: http://zakon1.rada.gov.ua (дата звернення 20.04.2019).

that defined subjects, besides National police, have rights to perform operatively-search activities. We are convinced that intelligence is one of the functions of operatively-search activities. Operative divisions of National police realizing intelligence functions by means of the system of intelligence, search, informational-analytical methods, including those from collection of operative and operatively-technological activities with the goal of timely prevention, discovery and neutralization of real and potential threats to national interests of Ukraine from crimes[4].

In article 8 of Law of Ukraine «About operatively-search activities» stated that certain subjects have rights to infiltrate into criminal organization as secret workers of the operative subdivision, or subject, who is cooperating with the latter, and keeping real information about their personality secret, create fake enterprises and organizations, produce documents which conceal a person or relationship of a persons, premises and means of transportation of operative subdivisions. Furthermore, article 13 of Law of Ukraine «About organizational-legislative foundation of combating organized crime» stated that while fighting organized crime, operative subdivisions have rights to employ secret cooperators, which can be introduced into criminal groups undercovered, providing that there was no other means for uncovering organized crimes and bringing these criminals to justice[5].

At the same time, article 9 of Law of Ukraine «About intelligence organs of Ukraine» suggests, that subjects of intelligence activities have rights to use documents which conceal employees and organizational affiliation of subdivisions, organizations, premises and means of transportation with intelligence organs of Ukraine; for conspiracy reasons create organizational structures, which are required in order to fulfill requests from intelligence organs of Ukraine and to cover their workers, and use money and property acquired as a result of their activities, in accordance with the guidelines of the Cabinet of Ministers of Ukraine[6].

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[4] Копан О. В. Забезпечення внутрішньої безпеки України: теоретико-управлінські заходи. Введення в поліцейську стратегію : монографія. Київ : НАВС, 2001. С. 27.

[5] Про організаційно-правові основи боротьби з організованою злочинністю : Закон України від 30.06.1993 р. № 3341-XII. Дата оновлення: 15.04.2019. URL: http://zakon1.rada.gov.ua (дата звернення 20.04.2019).

[6] Про розвідувальні органи України : Закон України від 22.03.2001 р. № 2331. Дата оновлення: 18.04.2019. URL: http://zakon1.rada.gov.ua (дата звернення 19.04.2019).

Current Criminal Procedural codex of Ukraine categorizes execution of the special task of uncovering unlawful activities by organized group or organization as a clandestine investigative (search) activities. According to article 272 of CPC of Ukraine, it is possible, in time of pre-trial investigation of serious or especially serious crimes, to obtain information, things and documents, which are important for pre-trial investigation, by a person, who, according to law, is performing a special task by infiltrating into criminal group or organization, or is a member of such group or organization, who are confidentially cooperating with the organs of pre-trial investigation[7]. At the same time, join order General Prosecutor of Ukraine, MIA of Ukraine, SS of Ukraine, Ukrainian Ministry of finance, Ukrainian border protection Administration, Ministry of Justice from 16.11.2012 № 114/1042/516/1199/936/1687/5 «About organization and execution of investigative (search) actions and using results in criminal proceedings» suggests, that performing of special task for uncovering unlawful activities of organized group or criminal organization is in organizing of investigative and operative subdivision and in introduction by them of an authorized person, who, according to law, will be performing such special task while working undiscovered in organized group or criminal organization and is procuring things and documents, which are important evidences in investigation of a crime or crimes committed by these groups[8]. Analysis of provisions of current laws, in our opinion, demonstrating that existing situation of the law provisioning of realization of intelligence functions of operatively-search activities is seemingly complete, at the first glance, but with more detailed review reveals the need for improvement by taking under consideration intersectional connections, correlation of terms and definitions, specialization in organization and tactics of entire law enforcement activities.

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[7] Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 р. № 4651-VI. Дата оновлення: 19.04.2019. URL: https://zakon.rada.gov.ua/laws/show/4651-17 (дата звернення 20.04.2019).

[8] Про організацію проведення негласних слідчих (розшукових) дій та використання їх результатів у кримінальному провадженні : наказ Генеральної Прокуратури України, МВС України, СБ України, Міністерства фінансів України, Адміністрації Державної прикордонної служби України, Міністерства юстиції України від 16.11.2012 № 114/1042/516/1199/936/1687/5. Дата оновлення: 17.04.2019. URL: https://zakon.rada.gov.ua/laws/show/v0114900-12 (дата звернення 19.04.2019).

According to current law the goals of operatively-search activities is procuring and fixation of the facts related to unlawful acts of subjects and groups, responsibilities for counter intelligence and destabilization activities by special services of the foreign countries and organizations based on the guidelines of the Criminal Code of Ukraine and with the goal to stop crime and in the interest of criminal legal proceedings, as well as for the purposes of obtaining information in the interest of safety of citizens, society and the state[9]. At the same time, while performing such duties, they are realizing all functions of operatively-search activities. But when we are talking about intelligence function, it worth pointing out that while performing these activities, tasks can be enhanced by: obtaining, analytical processing and sharing information with authorized bodies of state power with the goal of using such information in legislative, law enforcement and executive activities of the country; counteraction to organized criminal groups, infiltration of their members into government organizations, and expanding their influence on processes which take place in the country and society; prevention of real threats to national interests from organized crime, prevention of events and factors which can respond to such factors and create potential threat to national interests and national security of Ukraine; development and implementation of methods for neutralization and liquidation of organized criminal groups, creation of conditions for their uncovering by other means, participation in combatting international criminal activities.

Detailed knowledge of strategic situation, possible ways of their development, predicting emergence of dangerous situations creating pre-conditions for determining national interests; development of required policies for internal security; improving level of details of tasks for law enforcement; development of general strategy and necessary plan of actions. Successful implementation of those decisions if fully dependent on quality of information received, which can be provided by proper implementation of intelligence function of operatively-search activities. As it was rightfully outlined by the scientists, operatively-search activities in by itself is nothing more, but a cyclical process of searching for,

[9] Оперативно-розшукова діяльність органів внутрішніх справ : Загальна частина : підручник / С. В. Албул, К. І. Бєляков та ін. ; за ред. С. П. Черних, М. П. Водька, О. Ф. Долженкова. Київ : Відділ редакційно-видавничої діяльності МВС України, 2012. 884 с.

collecting, processing and timely use of operatively-search and other types of information[10]. The very objects which are the targets of implementation of operatively-search activities of National police are the criminal environment and its infrastructure[11]. As of today, the meaning of «criminal environment» covers not only crimes that already happened, but criminal ideology, criminal society and individual psychology, and other factors which collectively describe criminal activities. Some specialists using words «intrusive criminality» in their research, which, first of all, means that it penetrates, building on and plays an important role in the system of legislative, financial, and other relationships, gradually changing political, cultural and spiritual life of the society[12]. As for criminal environment, in our opinion, intrusiveness can be seen in two aspects: first, determination of the crime, which in turn acts as an element of the criminal environment; and second, as a functional determinant of the criminal environment itself, which gives it an ability to expand into spheres of a social life. This description becomes especially important under conditions of deep social crisis, when social system can no longer develop under circumstances of exhausted resources and sense of existence. At this time, when old system of the society is losing its abilities, the crisis of development is growing with stagnation at the background, and in the absence of the resource for renewal.

There are number of definitions of word «intelligence» in scientific and reference literature. For example, some thesaurus contains following definition: «intelligence is an act of collecting information about the enemy, at the peace times utilizing agents, spies, maps, plans, statistical data etc.; and during the war – using deserters and prisoners». According to specialists, from the philology standpoint, basis of the word «intelligence» derived from «obtaining information», or presence of the knowledge regarding some object. Amongst many definitions of «intelligence» most broad one is: special knowledge; type of

[10] Galuychek A. The Use of Undercover Forces in Law Enforcement Agencies of the Ukraine in Organized Crime Fighting: The Legal Aspect. *Law Enforcement Executive Forum*. USA, Illinois, 2005. № 5 (4). P. 59.

[11] Albul S. V. Philosophic Concepts of the Intelligence Function within the Operative-Investigative Activity of the National Police of Ukraine. *European Reforms Bulletin: international scientific peer-reviewed journal*. Grand Duchy of Luxembourg, 2017. № 1. P. 8.

[12] Gribov M. L. The improvement of the institute of secret investigatory operations. *Euro-American Scientific Cooperation.* Ontario, Canada, 2014. № 2. P. 77.

organization; process of obtaining knowledge. Sound definition of «intelligence», in our opinion, given by M. P. Vod'ko – «intelligence is an activity of authorized subjects who, by employing special means and methods, obtain information about ideas, plans and means by which the enemy can potentially or actually cause harm to objects of protection»[13].

Intelligence process starts with learning, analysis and assessment of operation situation, which currently exists. Operation situation, which is forming on a territory, object, direction of operation's service in the city, district, area, region and in the country in general is a complex of interconnected situations and processes, organized objective cause-consequence dependencies and natural way of development. When such studies and analysis produce results, they can be used for setting goals (tactical and strategic). And only after goals are set, we can start planning process.

Planning is a process of decision making, which helps to reach set goals, it is making decision in advance as to who, when and how is performing tasks; it is a process of making decisions about the future as to what, by whom and when thing should be done. As for intelligence, at the time of planning shall be determined forces and means, which are required for procuring of operatively important information. Collection of such information is performed by the employees of operating subdivisions of National police. It is possible to request additional information by means of concretization or by assigning additional tasks during the time of procurement of initial operatively important information, and by making decisions about use of additional forces and means[14]. Obtained operatively important information should be analyzed, acted on and is transformed into new, previously unknown operatively-search information, which should be properly documented[15]. Only after properly documenting, the results can be issued to authorized leaders for review, making appropriate decisions and making prognoses regarding possible developments of the situation of forming of the new tendencies. By obtaining operatively-search information, better general

[13] Водько Н. П. Формирование политики противодействия уголовным правонарушениям в Украине (оперативно-розыскной аспект) : монография. Одесса : Феникс, 2015. С. 118.

[14] Hirschmann Kai. Geheimdienste. Hamburg : Sabine Groenewold Verlag, 2004. 52 s.

[15] Цехан Д. М. Інформація як змістовна складова ОРД. *Південноукраїнський правничий часопис*. Одеса, 2009. № 2. С. 68.

operating picture is formed, hence new tactical and strategic goals can be set and new directions, forces and means can be dedicated for achieving these goals. This represents the meaning of the cyclicality of the process of realization of function of operatively-search activities. Therefore, intelligence cycle can be defined as goals oriented, planned process, which allows assigned subjects who conduct investigation, to analyze and estimate state of operative situation, collect operatively important data (information), concentrate and transform it into operative-search information and provide it to authorized leaders for decision making and forming prognoses.

2. Directions of Conceptualization and Processualization of Intelligence Function of Operative-Search Activities of National Police of Ukraine

Contemporary criminal situation in Ukraine is qualitatively new phenomenon based on the scale of criminal activities, as well as the level of their negative influence on livelihood of society, law and individual freedoms of the citizens[16]. In the last couple of years organized crime in our country has been transformed, increased number of criminal groups, who have well defined hierarchical structure, utilizing new technological means of performing unlawful activities, counter-acting law enforcement agencies. Today, dynamics and structure of crime, together with traditional conditions and circumstances, carrying above mentioned criminal factors, which arises from social difficulties and economic development of the society. At this background happened shift in measuring social values by certain groups of citizens toward unlawful way of living, which in turn leads to strengthening of such a socially dangerous phenomenon as organized crime[17].

Existing system of providing for internal security in Ukraine in general was adequate for conditions under which country existed in the first years of independence. However, the situation around national security, which formed at the beginning of the XXI st. century, because

[16] Дрёмин В. Н. Преступность как социальная практика: институциональная теория криминализации общества : монография. Одесса : Юридична література. 2009. С. 58.

[17] Водько Н. П. Формирование политики противодействия уголовным правонарушениям в Украине (оперативно-розыскной аспект) : монография. Одесса : Феникс, 2015. С. 114–115.

of widening of the spectrum of demands and perils, demanding new approaches to the system of providing internal security in Ukraine, and is overdue for modifications[18]. Very loosening of the state control over situation in the country gives opportunity for criminal elements set tone and dictate their own rules of behavior, ideology, subculture, cherish useful for their existence legislative, organizational and tactical decisions of the government, promote active opposition to law enforcement. To organize unlawful activities they are operating large financial resources, which, in particular, are used to bribe state officials, employees of law enforcement structures, financing specialists in various fields to create an effective mechanisms, technologies, approaches and schemes for committing crimes.

We convinced that effective counteractions to crime and especially in their organized forms, is impossible without understanding of processes which taking place in criminal environment or in turn creating of required conditions for documenting facts of unlawful activities. In connection with this, National police is facing the need to understand conditions leading to creation and existence of criminal formations, mechanisms by which they are causing harm, roles of each participant of criminal group in this process, movement of the shadow and legal financial instruments, which provides basis for these groups or represent target of their criminal interests, functioning of the infrastructure of organized crime etc.

Comparative analysis contemporary European and world practice showing that most developed countries taking the path of clear separation between criminal-procedural activities and actions related to procuring, development, analytical processing and prognostication of information about crime, separate crimes and persons related to them[19]. Exactly these activities can be called as criminal intelligence.

Most developed network of intelligence subdivisions exists in USA police, where every subdivision has its own intelligence group, which, depending on the level, can contain information-analytical subdivision, operatives, special operations group, experts, operative group, which

[18] Копан О. В. Забезпечення внутрішньої безпеки України: теоретико-управлінські заходи. Введення в поліцейську стратегію : монографія. Київ : НАВС, 2001. 423 с.

[19] Бандурка О. М., Перепелиця М. М., Манжай О. В., Шендрик В. В. Оперативно-розшукова компаративістика : монографія. Харків : Золота міля, 2013. С. 73.

works «under cover», external and electronic surveillance and material-technical support group[20]. General reason for existence of intelligence service of USA police is collection of operating information, which can provide for effective planning and realization of anti-criminal activities. This type of intelligence is called «internal intelligence»[21].

Similar subdivisions exist in French police-search and capture brigades. They utilize active measures for studding criminal elements and tracking them by infiltrating into their environment. The same approach is used by organization of special subdivisions in Switzerland. Rich experience utilizing intelligence subdivisions in crime-combatting activities is in the arsenal of Hungarian police. In its disposal there are groups of well undercover workers, specially trained for work inside of criminal environment. At the same time, criminal police in Germany and department for constitutional protection similarly using undercover operatives, primarily for uncovering severe and capital crimes[22]. Interestingly that in year 2012 Lithuanian republic adopted the Law «About criminal intelligence», which replaced the Law «About operatively-search activities». With adoption and implementation of new the law crime counter-action activities in Lithuanian republic consists of two, logical parts: intelligence activity and criminal-procedural one.

We must point out that with adoption of Criminal procedural code of Ukraine in 2012, operative-search activities had lost their offensive character. Operative sub departments in guardrails of criminal processing stripped out of the rights to energetically provide activities related to detection and documenting criminal activities. In fact, operative-search activities end after investigative subdivisions starts their criminal investigation. This situation leads to loss of operative positions and preventative nature of activities of National police. We convinced, that under this circumstances, establishing of criminal

[20] Савченко А. В., Матвійчук В. В., Никифорчук Д. Й. Міжнародний досвід використання агентури правоохоронними органами держав Європи та США : посібник / А. В. Савченко, В. В. Матвійчук, Д.Й. Никифорчук / За ред. Я. Ю. Кондратьєва. Київ : НАВС, 2004. С. 68.

[21] Шендрик В. В. Міжнародний досвід використання підрозділів поліції для отримання оперативно-розшукової інформації. *Право і Безпека.* Київ, 2009. № 1. С. 24.

[22] Еенбум Е. Ш. Розвідки Північної Америки, Європи та Японії. Країнознавчий портрет і аналіз : монографія. Вайнгайм : Вид-во. Stoppel, 1995. С. 84–85.

intelligence as integral part of operative-search activities of National police, can bring positive results in counter-acting contemporary crime and requires conceptualization. We are certain, that criminal intelligence is one of the functions of operative-search activities of National police and should be realized by implementation of system, consisting of intelligence, search, information-analytical methods, including utilization of operative and operative-technical means, directed to timely prevention, detection and neutralization of real and potential criminal threats to national interests of Ukraine. Ways of creation of criminal intelligence are organizationally-tactical forms – operative search, operatively-search prevention and operative development. Besides these, criminal intelligence activities must continue during pre-trial investigation and in time of execution of the punishment[23].

We are convinced that following problems which are getting solved by criminal intelligence of National police are: obtaining, analytical processing and providing of information regarding situation and possible developments of criminal activities in the country and its consumption in country's activities; assistance in implementation political activities of Ukraine for crime prevention; suppression of activities of organized criminal groups, infiltration of their members into state governments and expansion of their influences on processes in the country and society; prevention of realization of threats to national interests from organized crime; development and realization of the methods for neutralization and liquidation of organized criminal groups, creation of adequate conditions for discovering such groups; participation in international fighting efforts against organized crime.

Thinking about directions for conceptualization of intelligence function of operative-search activities of National police, we must point out that following problems must be solved as soon as possible:

1) Improving laws in the sphere of operative-search counteractions to crimes;

2) Conceptual designation of criminal intelligence of National police and its methodological foundation;

[23] Albul S. V. Criminal Intelligence as a Function of Operatively-Search Activity: European Experience and Ukrainian Prospects). *European Reforms Bulletin: international scientific peer-reviewed journal.* Grand Duchy of Luxembourg, 2015. № 2. P. 5.

3) Establishment of studying of the latest information regarding intelligence activities of police and law enforcement agencies of foreign countries;

4) Legislative and normative provisioning of activities of National polis of Ukraine as for counteracting crime;

5) Introduction and constant monitoring of national system of prevention and crime counteraction based on modeling of its strength to different kinds of criminal endangerment to person, society and country;

6) Continuation of the process of adaptation of the national laws to those from the European Union in the areas of crime prevention and counteractions;

7) Initiation of improvements of international legislative acts and harmonization of national law in the areas of crime counteraction with similar laws of the European Union;

8) Rebuilding organization structure of operative subdivisions on National police of Ukraine to counteract crime, structural optimization and staff numbers in subdivisions by taking into consideration real criminal treats to safety of people, society and country, as well as based on providing vertical system of managing corresponding subdivisions and regional branches;

9) Raising level of cooperation between National police and other state agencies for providing better crime prevention and counteraction;

10) Improving existing and development of new methods for counteracting crimes;

11) Improving information-analytical provisioning based on innovative approaches to utilization of contemporary informational and telecommunications technologies and conversion of information-referential work into intelligence-analytical with the goal to create prognosis of tendencies of society criminalization, quantifying degrees of risk and the scale on reginal, national and international levels as well as lowering latency levels of crimes;

12) Performing constant system analysis and multidimensional complex evaluation of reasons and conditions, which determine crime and risks of its expansion;

13) Strengthening, increase of efficiency and maximum realization of opportunities for international cooperation for crime prevention, including organized forms of the crime;

14) Establishing constant experience exchange with law enforcement from other countries, internship and training of corresponding specialists abroad;

15) Implementation of results of scientific research in the sphere of crime prevention, especially in operative-search activities;

16) Carrying out scientific researches to analyze the effectiveness of legislation and measures taken by state authorities in the field of prevention and counteraction to crime, information, organizational, scientific and methodological provision of this area of law-enforcement activity;

17) Improvement, in accordance with current needs and international experience, of the level of professional training of employees engaged in operational search activities;

18) Complex solution of issues of providing qualified personnel potential, based on professionalism, professionalism, personal moral qualities, etc.;

19) Proper resource and logistical support of units that carry out criminal intelligence;

20) Raising awareness of the society about the danger and scale of crime;

21) Formation of public opinion in order to facilitate the effective implementation of state policy in the field of prevention and counteraction of crime[24].

An important prerequisite for the conceptualization and processualisation of operative-search activities of the National Police is the development of a fundamentally new legal framework that would allow qualitative performance of tasks in this area. According to art. 272 of the Criminal Procedural Code of Ukraine, in the course of pre-trial investigation of grave or especially grave crimes, information, things and documents that are relevant for a pre-trial investigation, a person who, in accordance with the law, performs a special task, participating in an organized group or a criminal organization, may receive information, or is a member of the group or criminal organization that cooperates with the pre-trial investigation authorities on a confidential basis. The

[24] Albul S. V. Criminal Intelligence as a Function of Operatively-Search Activity: European Experience and Ukrainian Prospects). *European Reforms Bulletin: international scientific peer-reviewed journal.* Grand Duchy of Luxembourg, 2015. № 2. P. 6.

fulfillment of a special task cannot exceed six months, and if necessary, the term of its execution shall be extended by the investigator for a term not exceeding the term of pre-trial investigation[25]. In practice, this is a complex special operational-search operation, which is carried out directly by secret employees. Only the organization and preparation of such an operation takes time that can significantly exceed the six-month period, since its implementation involves a significant potential of a large number of specialists.

In accordance with Part 6 of art. 246 of the Criminal Procedural Code of Ukraine to conduct secret investigations (investigations) has the right of an investigator who conducts pre-trial investigation of a crime, or on his behalf – authorized operational units. The analysis of the above norms, as well as the practice of their application, gives grounds for arguing that the special task of disclosing the criminal activity of an organized group is directly carried out by the unscrupulous employees of the operational units introduced into the criminal environment. An investigator who conducts a pre-trial investigation of a crime, the prosecutor does not perform such a special task, and decide on its execution. In turn, the authorized operational units on behalf of the investigator carry out the organization of its conduct.

In order to align with the provisions of the theory and practice of operatively-search activities, it is necessary to make changes in art. 272 of the Criminal Procedure Code of Ukraine and in clause 8 of art. 8 of the Law of Ukraine « About operatively-search activities», namely: The title of article 272 of the Criminal Procedural Code of Ukraine should be worded as follows: «The introduction of an undercovered officer of an operational unit into an organized group or criminal organization».

Part 2 of article 272 of the Code of Criminal Procedure of Ukraine should be worded as follows: «The introduction of secret employees into an organized group or a criminal organization for the purpose of performing a special task is carried out on the basis of a resolution of the investigator agreed with the head of the pre-trial investigation body or a resolution of the prosecutor with the preservation of confidential information about the person».

[25] Кримінальний процесуальний кодекс України : Закон України від 13.04.2012 р. № 4651-VI. Дата оновлення: 19.04.2019. URL: https://zakon.rada.gov.ua/laws/show/4651-17 (дата звернення 20.04.2019).

Paragraph 8 of article 8 of the Law of Ukraine «About operatively-search activities» «The Rights of Departments Investigating Operational Investigations» shall be worded as follows: to introduce secret employees into an organized group or a criminal organization and perform a special task on the disclosure of organized activities of a criminal group or a criminal organization according to the provisions of art. 272 of the Code of Criminal Procedure of Ukraine.

In our opinion, the introduction of appropriate amendments and additions to the Criminal Procedural Code of Ukraine and the Law of Ukraine «About operatively-search activities» will contribute to unification of the national legislation of Ukraine to international norms in the field of combating crime.

CONCLUSIONS

Conceptualization and processualization of the intelligence function of the operational and investigative activities of the National Police of Ukraine is seen in the following areas:

1. Scientific substantiation of the conceptualization and proceduralization of the intelligence function of the operational police of the National Police.

2. Legislative support for the conceptualization and processualization of the intelligence function of the operative and investigative activities of the National Police, namely: the drafting of the Law "About Criminal Intelligence"; the introduction of amendments and additions to the Criminal Code, the Criminal Procedural Codes, the Laws «About National police», «About operatively-search activities», «About Organizational-Legislative Foundations of Combating Organized Crime», «About Intelligence Authorities of Ukraine», as well as to departmental normative acts.

In our view, the conceptualization and processualization of the intelligence function of the operatively-search activities of the National police of Ukraine will dramatically increase the fight against crime, increase the effectiveness of timely detection and overcoming the threats of criminalization of society.

SUMMARY

In this article author introduces the definition and general characteristics of criminal intelligence as a separate function of

operatively-search activities of the Ukrainian National police. Author substantiating his point of view for most problematic questions based on analysis of scientific literature, acting law and international practice of law enforcement activities, and is proposing concrete modifications in order to improve current laws. He is analyzing contemporary police practices of the USA and countries of the European Union related to existing police intelligence practices. Author explaining directions for conceptualization and establishing concrete procedures of the intelligence function of operatively-search activities of the Ukrainian National police. He clearly demonstrating the need to create Concept for development of the criminal intelligence of National police. He outlines the tasks, goals and major approaches for realization of such Concept. Furthermore, he proposes modernization of the legislative foundation of activities of the National police, Criminal Procedures Code and the Law «About operatively-search activities».

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2. Albul S. V. Criminal Intelligence as a Function of Operatively-Search Activity: European Experience and Ukrainian Prospects). *European Reforms Bulletin: international scientific peer-reviewed journal.* Grand Duchy of Luxembourg, 2015. № 2. P. 2–6.
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CRIMINOLOGICAL CHARACTERISTIC OF CRIMES IN THE SPHERE OF REAL ESTATE IN UKRAINE

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INTRODUCTION

The process of formation and development of the residential real estate market in Ukraine takes place under difficult conditions of multidimensional legal, economic and political reforms, which, as a rule, does not contribute to the overall stability of social relations, including in the housing market. The imperfection and imbalance of the current legislation, the lack of a system and coordination in the work of state bodies, inexperience of the participants in the legal relations are factors contributing to the rapid criminalization of the sphere of housing circulation in Ukraine. Instead of a legal, systemic, civilized housing market, there was a phenomenon that could be characterized as a "turnover of residential real estate" with signs of criminal activity.

A significant number of single crimes and systematic criminal activity have created a separate type of crime in the field of turnover of residential real estate. Particular attention deserves a tendency towards the formation and increase of the number of organized groups and criminal organizations operating in the field of illicit trafficking in residential real estate, indicating the transition of crime from the plane of the simple group into a systematic organized form. Such qualitative changes occur in the process of organizing targeted criminal activity, which consists in the systematic commission of criminal encroachment on objects of residential real estate in order to receive short-term extra profits. Another factor of such an organizational change in its structure is the steady tendency for expansion, that is, the inclusion of new participants with special knowledge, hold positions in government bodies. The subjects of such crimes are often the workers of realtor companies and private realtors. Often, accomplices are officials of state authorities, notaries. The criminal activity begins to gain signs of entrepreneurial activity, which exists along with legal and goes to a qualitatively new level of danger to society and the economy as a whole.

In fact, in this area there is a "criminal business". Specifies the theoretical and practical significance of the research.

1. Criminal System in the Sphere of Housing Properties and Their Classification

An important task for our study is the study of crime in the field of turnover of residential real estate from the standpoint of system analysis. This is a prerequisite for an understanding of this type of crime not as a statistical number of individual crimes, but as a certain integral system of delinquent acts of conduct that manifests itself in the area of residential real estate.

The question of crime, as a certain system of crimes, was and remains controversial in the scientific literature. However, most authors agree that crime is not a mere set of crimes[1]. Opponents of the recognition of crime as a system believe that there is no sufficient reason to recognize the crime of the system. In their opinion, crime is not devoid of elements of spontaneity, and the connection between crimes is largely absent, the individual elements of crime are not interrelated links of a holistic system. The very crime in society is preserved, not because of self-development, which is inherent in the systems, but because of the action external to her circumstances – the causes and conditions arising from the specific historical features of society's life. At the same time, they admit that crime has certain characteristics that are characteristic of the system. According to scientists, it should not be denied statistical stability, repeatability of crime. This is due to the fact that acts of criminal behavior are generated by similar determinants. Long-term preservation of these reasons leads to the preservation of the type of distribution of statistical indicators characterizing crime. Scientists argue: this is not enough to recognize

[1] Аванесов Г. А. Теория и методология криминологического прогнозирования. Москва : Юрид. лит., 1972. 334 с.; Волошина Л. А. О системном подходе к изучению сущности преступности. *Вопросы борьбы с преступностью.* 1972. Вып. 15. С. 15.; Даньшин И. Н. Общетеоретические проблемы криминологии : монография. Харьков : Прапор, 2005. 224 с.; Дрьомін В. М. Злочинність як соціальна практика: інституціональна теорія кримінализації суспільства : монографія. Одеса: Юрид. л-ра, 2009. 616 с.; Дрёмин В. Н. Преступность как обьект системного анализа. *Актуальні проблеми держави і права.* 2000. № 7. С. 242–255.; Кудрявцев В. Н. Причины правонарушений: монографія. Москва: Наука, 1976. 285 с.; Панов М. Об'єкт і система злочинів у сфері господарської діяльності. *Юридична Україна*. 2010. № 5. С. 13-19.

crime as a holistic system, but it is quite enough to seriously consider the issue of predicting crime. Also, researchers believe that although the crime figure is spontaneous, it is not a mechanical sum of certain criminal acts, but their organic set, the constituent elements of which are interconnected and interdependent. Between all signs of crime as a social phenomenon, there is a dialectical unity.

We adhere to the point of view of researchers who characterize crime as a system. In addition, crime in residential real estate turnover should also be considered as a system that can be explained by the following provisions[2].

In interaction with the environment crime in the field of turnover of residential real estate is considered as a subsystem of a wider system (crime). The latter is a subsystem of the highest with respect to it, a wider system – the social system of society. The crime in the sphere of residential real estate circulation has the integrity of the interconnected elements that make up it. In order to recognize crime in the field of residential property as a system, it is worth paying attention to such a sign as an emergence. The axiom of the emergence means that the whole always has special properties that are absent from its subsystems and is not equal to the sum of elements not united by system-forming connections. When creating a system-wide integrity, the resulting integration is subject to another (albeit possibly, and similar) laws of formation, functioning and evolution. The term "emergence" refers to the presence of all properties that are not reduced to the sum of the properties of the components and the connections between them[3].

Another feature that characterizes crime in the sphere of residential real estate as a system is its property of self-reproduction at the expense of preservation, adaptation to new conditions, influence on society through direct involvement in the criminal activities of new individuals. Criminality is always adapted to the environment, self-evolving and self-deterministic as a self-governing system.

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[2] Кудрявцев В. Н. Курс советской криминологии: Предмет. Методология. Преступнось и её причины. Преступник. Москва: Юрид. лит-ра. С. 148-149; Шипунова Т. В. Подходы к обьяснению преступности: противостояние или взаимодополнение (взгляд социолога). *Социологические иследования.* 2006. № 1. С. 91.

[3] Сутурин М. А. К вопросу о преступности как системе. *Вестник южно–уральского государственного университета. Серия: Право.* 2006. № 13. С. 170. URL: http://cyberleninka.ru/article/n/k–voprosu–o–prestupnosti–kak–sisteme (дата звернення: 05.07.2017)

To substantiate the systemic and structural nature of crime, it is necessary not only to highlight individual substructures (elements), but also to identify the objective connections between them. An objective relation is defined as a relation between objects and their properties, which (by virtue of their interaction) leads to the fact that the change of one is accompanied by the change of others. For example, encroachment on objects of residential real estate of citizens in most cases was accompanied by committing other additional crimes, which in their aggregate create separate types of crime (forcible, economic crime, etc.). The specified additional crimes are committed, as a rule, in order to facilitate possession of the right of ownership of objects of residential real estate or to conceal the consequences of criminal activity.

All elements of crime in the sphere of circulation of residential real estate as a system (crime, types of crime) are interrelated, that is, crime has its own structure. Speaking about the crime in the sphere of residential real estate as a system, it is necessary to pay attention to the fact that the allocation of structural components of crime is possible for various reasons. Conducting the specified classification of crimes in this area is one of the main conditions for a substantive and detailed study of crime in the field of turnover of residential real estate.

Questions related to the conduct of classifications, are one of the sharpest methodological problems of modern legal science, as emphasized by researchers[4]. In addition, the creation of new classifications faces numerous and varied difficulties, overcoming which is a difficult and time-consuming process due to the lack of defined criteria.

We consider it reasonable that any classification should meet the requirements, namely: the division is carried out only on one basis, it

[4] Кабанов П. А. Криминологическая классификация жертв политических преступлений в современной российской криминальной политической виктимологии. *Юридическое образование и наука.* 2007. № 4. С. 24–27; Устинова Т. Д Классификация преступлений в сфере экономической деятельности. *Закон и право.* 2003. № 3. С. 54-58; Николайченко В. В. Криминалистическая классификация пре ступлений. *Вестник Саратовской государственной академии права*. 2006. № 6. С. 125–127; Коробов П. Классификация преступлений по уровню их опасности. *Российская юстиция*. 2004. № 1. С. 47–49; Гревцева А. Ю. Классификация преступлений в современном уголовном праве. *Закон и право.* 2009. № 9. С. 51-54; Богданчиков С. В. Уголовно–правовая классификация преступлений против собственности. *Закон и право.* 2008. № 6. С. 36-38.

must be proportional or exhaustive, that is, the number of elements of division must correspond to the volume of the concept that is divided, the elements of division should mutually exclude each other, the division must be continuous[5].

As O.G. Kalman, in the first textbooks on criminology, the classification of crimes coincided with the classification of them in a special part of criminal law. The further development of criminological science has shown the lack of such an approach to solving criminological problems. Borrowed from the criminal law of the classification of crimes, can not satisfy the criminology, which considers the crime in the socio-legal aspect. Indeed, the classification of crimes by the degree of their social danger, the object of encroachments, although containing significant criminological information, but do not allow deeper to know the causes of the commission of crimes, the motivation of behavior, the identity of the offender, the situation of the crime, etc. At the same time, for criminology is very important situation-personal factor, without which it is impossible to analyze the mechanism of unlawful conduct, the establishment of circumstances conducive to crime, etc. Thus, for criminology, there are other criteria (grounds) for the classification[6].

In the scientific literature, scientists have proposed a significant number of both criminological and criminal-legal classifications. It is worth noting that the classifications developed in the science of criminal law are of interest to criminology, but they may not always satisfy the needs of criminological theory and practice, since they can not fully cover all peculiarities of committing crimes that are relevant to their prevention. The criminological classification of crimes involves taking into account certain criteria (attributes), depending on the purposes of classification.

A.F. Zelinsky argued that the criterion of criminological classification may be the nature of a socially dangerous act, which in turn is determined by the orientation of one or another object, the

[5] Маршакова Н. Н. Классификация в российском уголовном законодательстве: Теоретико–прикладной анализ : автореф. дис. на соиск. учен. степ. канд. юрид. наук : 12.00.08. Нижний Новгород, 2006. 30 с.

[6] Криминология: Учебник / под ред. В. Н. Кудрявцева, В. Е. Эминова. Москва: Юристъ, 1997. С. 208.

method of commission, the motivation, the form of guilt and some features of the subject[7].

However, despite the diversity of criminological classifications, there is still no single classification of crimes committed in the field of turnover of residential real estate in criminology, and the development of such a classification is quite problematic, given its heterogeneity and multi-dimensional aspect.

We will analyze the experience of foreign authors who have researched research on this subject. V.M. Antonov divides the whole set of crimes in the sphere of turnover of residential real estate into two large groups: crimes against buyers and crimes against sellers (owners)[8]. It should be noted that such a classification is incomplete, since in the sphere of turnover of residential real estate there are often crimes committed not against the victim's property, but, for example, against the authority of state authorities, local authorities, which directly concern the forging of documents, seals, stamps and the forms provided for in Article 357 of the Criminal Code of Ukraine, or forcing the execution or non-fulfillment of civil-law obligations stipulated by Article 355 of the Criminal Code of Ukraine, etc.

S.Yu. Arzumanov, conducting a classification of crimes in the field of turnover of residential real estate, identifies several criteria for such a division. Depending on the organizational and economic spheres of the market, the author shares the crimes in the sphere of sale and purchase, mines, rent and rental of housing (fraud and extortion); crimes in the sphere of activity of building and realtor organizations (evasion of payment of taxes and duties (mandatory payments) included in the taxation system)[9].

Depending on the purpose of the commission, the author highlights: crimes directly aimed at achieving a criminal result; crimes aimed at facilitating the commission of the above crimes; crimes aimed at concealing the consequences of the above-mentioned crimes. The stated

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[7] Зелинский А. Ф. О криминологической классификации пре ступлений. *Проблемы социалистической законности на современном этапе коммунистического строительства.* 1978. С. 210-212.

[8] Антонов В. Н. Преступные посягательства на рынок жилья : автореф. дис. на соиск. учен. степ. канд. юрид. наук : 12.00.08. Владивосток, 1998. 15 с.

[9] Арзуманов С. Ю. Криминологическая характеристика и предупреждение преступлений, совершаемых на рынке жилой недвижимости: автореф. дис. на соиск. учен. степ. канд. юрид. наук спец.: 12.00.08. Москва, 2006. 20 с.

criterion proposed by the author is reasonable, but it is not possible to fully agree with the elements that the scientist points out. Thus, crimes against human life and health in this classification can be regarded as crimes aimed at facilitating the commission of a crime aimed at achieving a criminal result, and in crimes aimed at concealing the consequences.

Investigation of sentences in criminal cases (criminal proceedings) allows us to conclude that in the area of turnover of residential real estate there are crimes that cover a wide range of sections and articles of the Criminal Code of Ukraine.

Crime in the sphere of residential real estate turnover, as a certain system, is divided into two large subsystems: crime in the sphere of rental of housing and crime in respect of encroachment on ownership of residential property in the case of other types of civil law agreements (for example, purchase and sale, mines, donations, etc.). Of course, like any other, the specified division is conditional, but it will continue to be necessary in investigating the personal qualities of the offender and victim, as well as during the development of measures to prevent the crime of the specified species, taking into account the specificities of the factors generating and facilitating the commission of crimes and the subject of attacks that have certain differences in these types of crime.

Depending on the purpose of committing crimes in the sphere of turnover of residential real estate, it is possible to distinguish between two groups: the main ones, which are aimed at realization of the criminal intention, that is, possession of funds, residential real estate, or the acquisition of the right to the specified property (this group directly includes fraud and extortion); related crimes related to the commission of the main crime and are usually aimed at facilitating his commission or aimed at concealing the consequences of criminal acts (falsification of documents, bodily harm, corruption offenses, etc.).

Depending on the subject of encroachment crimes in the field of turnover of residential real estate can be divided into the following groups: aimed at taking possession of the victims and aimed at taking ownership of the object of residential real estate.

2. Quantitative and Qualitative Indicators of Crime in the Human Resource Development of Ukraine

The criminological characteristic of any kind of crime involves the study of its quantitative and qualitative indicators, which in the criminological science is taken to classify level, dynamics, geography, structure, etc. Investigation of indicators of crime in the field of turnover of residential real estate will allow to trace the scale of the spread of this type of crime in Ukraine, as well as to determine its place in the structure of crime in general.

Immediately before studying the indicators of the specified type of crime it is necessary to pay attention to the reliability of the received data, which is connected with several factors. Thus, in the statistical reporting of the Ministry of Internal Affairs of Ukraine there is no information about fraud or extortion committed in the field of turnover of residential real estate, therefore we will use the data obtained during our own research, as well as received by other scientists who have been working in this area. Another factor hindering the assessment of the real level of crime in this area is the high level of latency of these crimes. Data used by scientists to use it will also be used for its definition.

Criminological characteristics of crime in the field of turnover of residential real estate will be carried out on the basis of 240 investigated sentences in criminal cases (criminal proceedings) in the course of committing fraud or extortion of property rights to residential real estate, or proceeds from their sale, or in advance payments, etc. , which were approved in the period from 2004 to 2015 on the territory of Ukraine. The above materials are freely available on the official website of the "United State Register of Judicial Decisions". During the study of 240 sentences in criminal cases (criminal proceedings), 670 episodes of crimes were detected and 433 people were convicted. Taking into account that the statistics of the Ministry of Internal Affairs of Ukraine are of a limited nature, contain only general indicators of fraud and extortion and, as a result, do not provide detailed information concerning the criminological characteristics of these crimes, we will continue to use the data obtained on the basis of our research[10].

[10] Дикий О.В. Кримінологічні засади вивчення і попередження злочинів у сфері обороту житлової нерухомості в Україні: автореф. дис. канд. юрид. наук: 12.00.08. Одеса, 2015. С. 8.

The first indicator to be investigated is the level of crime. Using information contained in sentences in criminal cases (criminal proceedings), it can be argued that since 2004, the level of crime in the field of turnover of residential real estate has steadily increased. It was found that 34 crimes were committed in 2004, in 2005 – 46, in 2006 – 51, in 2007 – 96, in 2008 – 58, in 2009 – 45, in 2010 – 59, in 2011 – 94, in 2012 -53 , in 2013 – 53, in 2014 – 81. In addition, a significant number of crimes that were not detected, that is, remained latent, should be taken into account. In total, this figure for fraud is 49%. It can be assumed that in the sphere of turnover of residential real estate the indicator is much higher, but such information can not be confirmed on the basis of empirical data that was investigated.

It should be noted that the Unified State Register of Judgments (hereinafter referred to as the USSR) was actually created in 2006, but today there are some problems with filling the very Single State Register of court decisions. Also, it should be noted that the data received in 2013 are incomplete because some cases (criminal proceedings) have not yet been convicted. Therefore, data for 2004-2006, 2013-2014 are not, despite this, studies show that crime in the field of turnover of residential real estate is beginning to gain more mass character.

Studies conducted by us show a steady tendency to increase the number of committed crimes. However, the sharp jump in the level of crime in 2007 and 2011 and the decrease in other years, in our opinion, does not indicate a critical criminal situation in the field of turnover of residential real estate and the effective activity of state structures in preventing this type of crime, but the imperfection and unsystematic conduct of previous years of the USSR. Given the important social and legal reforms that began in Ukraine in 2014, as well as the significant decline in the economy and material provision of the population, it is worth assuming that the level of crime in the field of turnover of residential real estate in the future will also have a tendency to increase.

It should also be borne in mind that in the territory of Ukraine, temporarily occupied as a result of armed aggression of the Russian Federation and on the territory of the operation of the combined forces, there is virtually no statistical record of offenses. That is, the actual level of crime significantly exceeds the registered.

Also, it should be noted that starting from 2013, in the statistical information of the General Prosecutor's Office of Ukraine "On

Registered Criminal Offenses and the Results of Their Pre-trial Investigation," an additional Count of Fraud Schedule "related to the Acquisition of Property" appeared. Thus, in 2013 there were 1335 registered, and in 2014 – 1024 criminal offenses related to ownership of real estate. Of these, in 2013, in 56 cases, individuals were notified of suspicion and in 41 cases, criminal offenses were sent to the court with a criminal act, and in 2014 – 71 and 46 respectively. However, in our work, we can not fully utilize these indicators, because in the column "related to real estate ownership" also other types of real estate, such as land, etc. are taken into account.

It should be noted that our research did not find confirmation of the hypothesis about the direct link between the dynamics of crime and purchasing activity in the field of turnover of residential real estate. This is confirmed by the fact that the volatility of the number of transactions in the field of turnover of residential real estate did not affect the number of crimes committed. Thus, according to the Ministry of Justice of Ukraine, in 2012, about 266,000 agreements with apartments and residential buildings were registered, in 2011 – 254030, in 2010 – 218120, in 2010 – 217029, in 2008 – 158431, in 2007 – 126744[11].

It should be noted that in the scientific literature there was no research on determining the level of latency of crime in the field of turnover of residential real estate, and given the insignificant amount of empirical material, it is not considered possible to conduct a representative survey for today. To determine the level of crime latency in the field of turnover of residential real estate, we will use the results of research by other scientists, obtained on the basis of study of the latency of crime in general. Thus, B.Golovkin conducted a study of the level of latent mercenary-violent crime in Ukraine in Kharkiv and Cherkasy regions in 2008. In total, 1104 people were interviewed. Based on the data obtained during the survey, the author came to the conclusion that the level of latency of selfish-violent crimes is at 54% of the total number of crimes committed[12].

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[11] Другий рік поспіль ринок нерухомості в Україні демонструє поступове зростання. веб-сайт. URL: http://www.kmu.gov.ua/control/uk/publish/article?art_id=246069296& cat_id=244276429 (дата звернення: 05.07.2017).

[12] Головкін Б. Латентний вимір корисливої насильницької злочинності в Україні. *Юридична Україна.* 2009. № 6. С. 113.

V.S. Batyrhareyeva on the basis of the anonymous questionnaire, 461 persons from the number of convicted recidivists found that 74.6% of them had committed other crimes before the last conviction, which were unknown to law enforcement authorities, in addition, 82.9% of them said that they had committed the offense repeatedly. That is, the actual size of recurrent crime is at least twice as high as the registered one[13].

Using these studies of scholars and considering them reliable, it can be argued that the level of crime in the area of turnover of residential real estate is twice that of registered indicators. To fulfill the goals of our study, we also consider it necessary to turn to the mechanism of the formation of the latent part of crime in the field of turnover of residential real estate proposed by V.S. Batrygareyeva[14].

Particular attention deserves the last two types of artificial latency, as in the area of turnover of residential real estate criminals disguise illegal activities under civil law operations. In addition, law enforcement agencies can easily err on the basis of poor legal training and lack of professional experience in determining the nature of social relations that have arisen between individuals and to provide such relations only with civil status, which will not allow full protection of rights in the future and the interests of the victim.

The next crime indicator is the structure, the essence of which is to describe the correlation between groups and types of crimes. It always reflects the relationship between parts of the whole. In this section, we will not provide a detailed description of the elements allocated on the basis of socio-demographic and criminal-law criteria, as this is not the subject of the study. Here we turn attention only to the most urgent problems.

The whole set of crimes in the area of residential real estate can be divided into two large groups: crimes in the field of lease of residential property and crimes in the case of other civil-law contracts. These contracts include, in particular, the sale and purchase of residential property, mines, the making of wills, etc.

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[13] Батиргареєва В. С. Кримінологічний аналіз латентної рецидивної злочинності. *Актуальные проблемы криминологии и криминальной психологии* / под ред.: М. Ф. Орзиха, В. Н. Дремина. Одесса, 2007. С. 107.

[14] Лунеев В. В. Преступность XX века: мировые, региональные и российские тенденции. Москва : Волтерс Клувер, 2005. С. 110.

It was established that out of 240 sentences 82 were adopted in respect of persons who committed crimes in the field of lease of residential real estate, 158 in relation to persons when concluding other civil-law contracts, of which 7 were made against extortionists. That is, the absolute majority of crimes is committed by fraud.

We will analyze the crime in these areas, depending on the severity of the crimes provided for in Article 12 of the Criminal Code of Ukraine. Thus, the investigation of sentences showed that in the area of lease of residential real estate persons committed exclusively fraud for the capture of the victims, in addition, the prevalence of the commission of crimes of average gravity – 204, the small gravity was recorded 63 cases, 1 case of a grave crime (a total of 268). This situation can be explained by the small amount of money offended by the perpetrators and the relative ease of committing such attacks, which does not require unification into stable groups (organized crime groups, criminal organizations) to achieve intent.

In contrast to the sphere of rental of housing, during the conclusion of other treaties of a civil nature, the number of especially serious and grave crimes prevails. Yes, we have registered particularly serious crimes – 213, serious crimes – 109, medium gravity – 64, crimes of minor gravity – 16[15].

This is due to the commission of crimes in particularly large numbers and organized groups. However, despite the special danger of such crimes, it is worth noting the rather humane activity of the justice system, which will be discussed in the next section.

Particular attention deserves the group nature of crime in the area of turnover of residential real estate, which has a steady tendency to improve criminal qualifications, internal organization, professionalism, technical equipment, which greatly complicates the implementation of effective activities to prevent the crimes committed by such groups. Investigation of the adopted sentences showed that in 141 cases (out of 240 sentences) the crimes were committed alone, in 78 cases – by the group under the previous convocation, in 3 cases by a group without

[15] Дикий О. В. Кримінологічна характеристика способів вчинення шахрайств в сфері обороту житлової нерухомості. *Часопис Академії адвокатури України.* 2014. Т. 7. № 2. С. 36. Режим доступу: http://nbuv.gov.ua/j-pdf/Chaau_2014_7_2_5.pdf (дата звернення: 05.07.2017).

prior conspiracy, in 17 – by an organized group and in one case by a criminal organization.

In general, 341 episodes of crimes committed in the field of turnover of residential real estate were established in organized forms. In addition, the level of latent recidivism is 80% of the total number of crimes committed.

Detailed analysis of the group nature of crime in the area of residential real estate. So, in contrast to fraud, during extortion, crimes were committed only with complicity. We recorded 4 cases of organized crime by organized groups (16 episodes in total), 4 cases of crimes committed by a group on the basis of a preliminary conspiracy (only 14 episodes) and 1 case of crime by a criminal organization (total 7 episodes). Based on these data, we can say that about 37 victims lost their housing.

To fully investigate the group nature of the fraud, we consider it appropriate to divide it into two groups depending on the sphere of civil-law relations: during the lease of residential real estate objects and the implementation of other civil-law contracts. In the field of the conclusion of contracts of civil law, in addition to lease, in 84 cases, the crimes committed alone, in 56 cases, the group by preliminary agreement, in 1 case, the group without a preliminary conspiracy, 16 – organized by the group and in one case, a criminal organization. According to our research, in the group 34 cases consisted of 2 persons, in 13 cases – 3 persons, in 16 cases – 4 persons and in 10 cases – more than 5 people.

When renting a home significantly exceeds the number of crimes committed alone, without complicity. This can be explained by the simplicity of an agreement, usually a small cost of rental housing and legal illiteracy of victims. The data are as follows: without complicity, 57, according to the previous conspiracy by a group of people (92% – 2 persons) – 22. The absence of crimes committed by organized groups, in our opinion, is associated with low profitability of such activities for them[16].

It should be noted that although the majority of crimes are committed by groups according to the above-mentioned data, they are concerned

[16] Дикий О. В. Кримінологічна характеристика особистості злочинця в сфері обороту житлової нерухомості. *Актуальні проблеми держави і права : зб. наук. пр.* 2013. Вип. 70. С. 350.

about the increase in the number of identified organized groups and criminal organizations, indicating the transition of crime from the plane of simple group crime into its organized form. Such a qualitative transition occurs in the process of criminal activity, consisting in the systematic commission of the same type of criminal encroachment on objects of residential real estate for short-term extra profits.

Another factor of such an organizational change in its structure is the persistent tendency for expansion, that is, the inclusion of new participants with specialist knowledge, sometimes occupy positions in state bodies. This is due to the improvement of the mechanisms of committing crimes to accelerate the achievement of the criminal result, as well as to conceal the signs of the activity of such a group. It is worthwhile to note that criminal activity is a system of criminal acts envisaged by the criminal law and closely related to other pre-criminal and post-criminal acts that are psychologically determined by a general motive, the realization of which is planned by the subject by setting and achieving separate, intermediate goals. According to the scientist, criminal activity is carried out not in isolation from other, legal activities. But in some cases criminal activity seems to be intertwined with labor, namely, in management activity[17]. The stated statement of the author is clearly traceable during the investigation of the criminal activity of persons in the area of housing turnover. After all, the actors of such crimes are workers of real estate companies, private realtors, often accomplices are officials of state authorities, notaries. The criminal activity begins to gain signs of entrepreneurial activity, which exists along with legal and goes to a qualitatively new level of danger to society and the economy as a whole, in fact, in this area there is a "criminal business". The most characteristic is the activity of organized crime in this area, which defines itself as a special kind of criminal practice, which eventually increasingly shows signs of a social institution. In addition, the degree of institutionalization of this type of crime is largely determined by its fundamental properties: the organization and systematic nature of criminal forms of behavior[18].

[17] Зелинский А. Ф. Криминальная психология : монография. Киев : Юринком Интер, 1999. С. 96.

[18] Дрьомін В. М. Злочинність як соціальна практика: інституціональна теорія криміналізації суспільства : монографія. Одеса: Юрид. л-ра, 2009. С. 428.

Based on the data obtained during the investigation of sentences, it can be argued that crime in the conclusion of various types of contracts of a civil law nature (except for rent) does not apply to seasonal crime. Thus, in the autumn there were 117 cases of committing crimes, 109 in the winter, 109 in the spring and 121 in the summer.

However, another situation is observed in the area of rental housing. In 88 cases, crimes committed in the fall, 72 in summer, 64 in winter and 64 in spring. It is worth paying attention that crimes in this area are committed during the long-term lease (from 1 month). The increase in the level of crime during the rental of housing in the autumn can be explained by the increase in demand and such objects of residential real estate. It should be noted that the most common group of tenants are young people who, by their social status, are students or persons not working at their place of residence, as well as tourists, they do not have sufficient skills and experience to protect themselves from criminals.

Particular attention for the criminological characteristics of any type of crime deserves the study of the identity of criminals. Therefore, in the next section, it will be exactly this.

CONCLUSIONS

On the basis of the study, it was substantiated that a large number of single crimes and systemic criminal activity form a separate type of crime that affects the various spheres of society and other forms of crime that it generates. Crime in the field of turnover of residential real estate is a system of crimes, which is divided into two subsystems: crime in the field of rental housing and crime in case of encroachment on ownership of residential property in the conclusion of other types of civil law (for example, purchase and sale, mines, donations, etc.).

Depending on the purpose of committing crimes in the sphere of turnover of residential real estate, it is possible to distinguish between two groups: the main ones, which are aimed at realization of the criminal intention, that is, possession of funds, residential real estate, or the acquisition of the right to the specified property (this group directly includes fraud and extortion); Related related to the commission of the main crime and are usually aimed at facilitating his commission or aimed at concealing the consequences of criminal acts (forgery of documents, bodily harm, corruption offenses, etc.).

The dynamics of crime in the field of turnover of residential real estate has a steady tendency to increase the number of committed crimes. The study did not find confirmation of the hypothesis about the direct connection of crime and economic processes occurring in the field of turnover of residential real estate. Attention is drawn to the high level of latency of crime in the field of turnover of residential real estate.

Particular attention deserves the group nature of crime in the field of turnover of residential real estate, which has a steady tendency to improve criminal skills, internal organization, professionalism, technical equipment, which greatly impedes the effective conduct of crime prevention activities committed by such groups.

It was proved that in the sphere of turnover of residential real estate the tendency to increase the recidivism of crimes is changing, which is extremely unfavorable factor for preventive activity of law enforcement bodies in this area. It is established that crimes in the field of turnover of residential real estate in their mechanism of implementation are quite complicated. Because of this, often committed with complicity to facilitate his commission, as well as to accelerate the achievement of a criminal goal.

SUMMARY

The thesis is a criminological research into crime in the sphere of residential real estate turnover in Ukraine. It is established that a significant number of individual crimes and systematic criminal activity create an independent type of crime. As a certain system, crime in the sphere of residential real estate turnover is divided into two large subsystems: crime in the sphere of rent of residential real estate and crime related to infringement on the ownership right on residential real estate objects in the process of conclusion of other types of civil legal agreements (for example, buying-selling, barter, deed of gift etc.). The analysis of empirical data has revealed that the dynamics of criminality in the sphere of residential real estate turnover has a stable tendency of growth in the number of committed crimes. The thesis highlights the high level of latent criminality in the sphere of residential real estate turnover and group character of criminality in the sphere of residential real estate turnover, which has a constant tendency of improvement of level of criminal proficiency, internal organization, professionalism, technical equipment, etc.; and the tendencies of recidivism growth.

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THE SCENE OF THE CRIME AS AN OBJECT FOR RESEARCH

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INTRODUCTION

Criminal offenses are the most negative, immoral and generally dangerous phenomenon in the life of modern society. They cause destructive consequences for the state, society and a particular person. Criminal activity significantly influences on all social institutions, thus determining the dysfunction of them. The social and economic crisis that has recently been observed in the Ukraine, has led to the emergence of a number of factors, which cased a steady rise of the number of criminal offenses, thus consequently the issues of crime combating have become particularly relevant.

These factors predetermine the necessity for further in-depth study of criminal activity which aids to improve the effectiveness of the recommendations for its detection, investigation and prevention.

One of the most important elements of the crime mechanism is the crime scene. It is a mandatory element of the crime mechanism since any crime is committed in conditions of objective reality which significantly affect the behavior of the offender and the mechanism of trace formation. Knowledge of certain types of crime scene from certain categories of crimes allows investigator or other authorized person to submit valid versions and simulate the situation for a specific crime, which is investigating and to distinguish its features. Knowledge of relationships and dependencies of the crime scene and other circumstances of the crime contributes to establishing a genuine and complete picture of the crime.

The imperfection of the theoretical development of the doctrine of the crime scene and its place in criminalistics negatively affects the state of criminalistics in general, and on the direct application of existing scientific developments, methods and practical recommendations in crime investigation.

The above suggests that the doctrine of the crime scene as a significant concept of criminalistics currently is extremely relevant and practically in demand which led to the choice of research topic.

1. The Usage of Data About the Crime Scene in the Cognitive Activity of Investigator

Cognition as an activity is realized through the system of cognitive means: sensory observation; everyday practice; experiment; models; mathematical apparatus; methodological basis[1].

Cognition of the crime is a complex mental activity that encounters certain difficulties, which are related to the mediation of the knowledge of the events of the past through the prism of the results of reflecting the circumstances of the crime in the environment.

In legal literature it has been repeatedly noted that the investigation of a crime in its content is a kind of cognitive activity[2].

Cognition is the process of obtaining, comprehending and using information, through which knowledge is formed in relation to an object that is scrutinized[3]. Implicit reproduction based on the collected actual data of a coherent picture of the accomplished and its consequences for all essential criminalistic and legally significant features forms the general cognitive task of criminal proceedings[4].

The cognitive essence of criminal-procedural knowledge consists in the retrospective disclosure (knowledge) of the individual aspects of the events of the past and the establishment on this basis of objective truth[5].

The specifics of criminal procedural cognitive activity consists of the fact that the investigation body examines interconnections directly perceive phenomena, as well as those that are reflected in the minds of people. In the first case natural phenomena and patterns are investigated,

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[1] Андреев И. Д. Основы теории познания. М. : Изд-во АН СССР, 1959. С. 177.

[2] Проблема связей и отношений в материалистической диалектике / отв. ред. Тюхин В. С. М. : Наука, 1990. С. 23; Медведев Н. Н. Теоретические основы расследования. Краснодар : Кубан. гос. ун-т, 1977. С. 4–24; Якубович Н. А. Теоретические основы предварительного следствия. М. : ВШ МВД СССР, 1971. С. 48–49; Белкин Р. С. Криминалистика и доказывание (методологические проблемы). М. : Юридическая литература, 1969. С. 8-12.

[3] Коновалова В. Е. Правовая психология : учебное пособие. Х. : Основа, 1990. С. 58.

[4] Криминалистика / под редакцией Образцова В. А.. М. : Юрист, 1995. С. 69.

[5] Образцов В. А. Основы криминалистики. М. : Юристъ, 1996. С. 13.

while objectively determined tasks are solved. In the second case, the laws of the psyche of humans, their emotions, desires and intentions are investigated, therefore subjectively determined "riddles"[6].

In the opinion of O. I. Trusov, which would have no significant specificity of proof, it is nothing more than a kind of cognitive activity, since its purpose is to establish the truth[7].

In conducting an investigation, the investigator acquires certain knowledge of the crime committed, guilty person and on this basis makes conclusions, makes appropriate decisions. The knowledge of the facts of objective reality permeates all the activities of the investigator in the criminal process[8].

It must be taken into account that the investigation has a research nature, therefore, it uses not only empirical but also theoretical means of cognition[9]. Thus, in a criminal proceeding, the investigator applies both empirical and theoretical means by which he learns the event that has occurred. R. S. Belkin and A.I. Wienberg noted that the classification of methods of science and practice on empirical and logical (theoretical) is very conditional. Any empirical method is not possible without meaningful human activity, without setting the task and processing the results. Similarly, logical cognition is impossible without a sensory element[10].

Empirical is a level of knowledge that is realized, mainly, on the sensual level, thus, due to the direct interaction of the senses with the environment. The empirical level of knowledge explores the object from its external manifestations, features and properties available at the level of perception.

With regard to empirical knowledge, it can be argued that it is carried out by the investigator in the course of conducting the relevant

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[6] Берназ В. Д. Понятие следственной деятельности: криминалистические и психологические аспекты. *Вісник НУВС.* 2003. № 21. Ч. 1. С. 65–72; Стратонов В. М. Криміналістична теорія пізнавальної діяльності : монографія. Х. : Вид-во Херсон. держ. ун-ту, 2009. С. 231.

[7] Трусов А. И. Основы теории судебных доказательств. Краткий очерк. М. : Госюриздат, 1960. С. 9.

[8] Лузгин И. М. Расследование как процесс познания : учебное пособие. М., 1969. С. 11.

[9] Проблема связей и отношений в материалистической диалектике / отв. ред. Тюхин В. С. М. : Наука, 1990. С. 69.

[10] Белкин Р. С. Криминалистика и доказывание. М. : Юридическая литература, 1969. С. 26.

investigative actions, since the initial knowledge of the crime and the circumstances of the crime investigator occurs precisely at the sensory level of perception of information. Empirical cognitive techniques such as observation, measurement, experiment, and others are effectively used by the investigator to search, detect, research, and use relevant information.

During the investigation, it is possible with the help of specially developed theories, methodologies, methods, principles to investigate and analyze not only external but also internal properties of the object of research, to comprehend its essence and content.

The investigator also applies the theoretical level of knowledge, since in his work uses all the techniques, methods and means of research of realities of reality that are proposed by science. The rationality and degree of effectiveness of using theoretical achievements depends on the level of education and intellectual ability of the investigator.

For tasks of practical life and for scientific knowledge, V.F. Asmus noted that it is important, that out of all the enormous set of subject properties, our though highlights the most important and noticeable, in such a way that each of the features was absolutely necessary, and all the signs taken together would be sufficient for them to distinguish this object from all others, to scrutinize this subject[11].

During the investigation the research of each crime situation can be considered as part of the final task correlated with the establishment of the subject of evidence, as well as an indirect task which solving helps to clarify other circumstances of the crime. As already mentioned, material situation – this is the situation with which the investigator encounters, first and foremost, which allows him to put forward versions of the method of crime, the behavior of the offender and other circumstances. However, knowledge of the situation of a crime is a difficult task, since not all of its elements are obvious, especially with regard to which the perpetrator committed measures of staging and distortion of the actual circumstances of the event. Therefore, the situation of the crime in all its forms continues to be scrutinized throughout the investigation.

[11] Асмус В. Ф. Логика. Изд. 2-е, стереотипное. М. : Едиториал УРСС, 2001. С. 32.

According to generalization of the views of criminalists[12] it can be argued that cognitive activity of the investigator on the nature and circumstances of the crime, in particular, its environment the situation has certain features that distinguish it among other types of knowledge:

firstly, the cognitive activity of the investigator, has a retrospective character, in particular is intended to recreate an event that has taken place in the past on the basis of information that is encrypted in the context of scene of the crime; however, it should be noted that scrutiny of the crime scene also provides an opportunity for forecasting developments of the further event, when its research is conducted within the framework of investigating the repetition of the crime. Then information about the typical scene of crime in which the offender made preparation, commit and conceal the crime gives an opportunity to predict his further actions and the conditions in which he will implement them;

secondly, the cognitive activity of the investigator is characterized by a limited amount of information regarding the crime scene which at the beginning of the investigation has fragmentary character and has low level of reliability;

thirdly, such activity is aimed at establishing an objective picture, namely, is finding out all the circumstances of a criminal incident by examining the circumstances of a crime;

fourthly, the cognitive activity of the investigator is aimed at investigating the circumstances of the crime in the totality of its elements (place, time, other conditions) which are interconnected, so that knowledge has a systemic and structural character;

fifthly, knowing the circumstances of the crime is an intermediate object through which other circumstances of the crime are learned – the ultimate object of cognition in the investigation.

We can agree with the opinion of I. M. Akimov, who noted that, careful, thoughtful study of the crime scene like introducing into the atmosphere of a crime which is reflected in the environment and not so much visible as it is felt and guessed. Penetration into the essence of the crime scene leads to a clear understanding of what happened to

[12] Котюк І. І. Теорія судового пізнання : монографія. К. : Видавничо-поліграфічний центр «Київський університет», 2006. С. 100; Стратонов В. М. Криміналістична теорія пізнавальної діяльності : монографія. Х. : Вид-во Херсон. держ. ун-ту, 2009. С. 30; Тіщенко В. В. Теоретичні і практичні основи методики розслідування злочинів : монографія. О. : Фенікс, 2007. С. 90.

the comprehension of the inner connection between actions which were committed by a criminal will and their display outside. Such an understanding enables not only mentally to reproduce the picture of a crime, but also to understand the motives that guided the offender while committing the crime. Thus it becomes the key to the crime solving[13].

Currently in the criminalistics, there are two approaches to understanding the circumstances of the crime.

In the narrow sense, it is the place of the crime, which is serving as a system of the material world objects, in which the crime was committed and which is the bearer of information regarding the event, what appeared in it in the form of reflection.

It should be said that a narrow approach to understanding the scene of the crime was typical for the early period of criminalistics was typical for the early period of criminalistics when the scene of the crime was identified with the notion of the place of the crime

It should be noted that aforementioned approach restricts the possibility of studying the issue under study, since it takes for the original value only reflected in objective reality material constituent of a criminal events and leaves out the attention other significant elements which are an integral part of the structure of the crime scene and characterize the system of conditions in which actions were of preparation and concealment of a criminal offense were taken.

Identifying the concepts of "crime scene" and "crime place" leads to narrowing the content of the latter, and as a consequence of the incorrect perception of its essence. It should be said that the scene of crime is a broader concept than the place of crime, since the crime scene is not only a system of objects of the material world which contains a mapping of the crime event but also information regarding conditions in which the crime was being prepared, external factors which contributed or prevented the events of the crime, the circumstances under which the process of concealing the crime took place.

Depending on the significance of the investigation V. I. Kulikov identified three situations in which can be used the information about the scene of crime: information about the scene of crime is considered as an

[13] Якимов И. Н. Криминалистика : Руководство по уголовной технике и тактике (репринт. изд. 1925 г.). М. : ЛексЭст, 2003. С. 192–193.

additional source of evidence, what is available in the criminal proceedings; information about the crime scene become equivalent to another source of evidence, information about the scene of crime becomes the only available source of forensic information the circumstances of the crime and the persons who committed it[14].

From the above it is seen, that, depending on each particular situation, the information, which is in the context of a crime scene acquires different significance in the investigation.

The crime scene consists of material, microsocial and moral-psychological environment in which actions to prepare, implement and conceal the crime were taken. It should be noted, that the mentioned structure of the crime scene, depending on the type of crime can be truncated and consist of only two elements micro-social and moral-psychological environment.

Triple element of the crime scene which is typical for all kinds of crime, except for crimes, which are characterized by two elemental composition, for example: the involvement of underage in criminal activity, threat of murder and others which do not contain the material crime scene.

2. Programming of the Investigation Process with the Aid of Information About the Scene of the Crime

The initial activity of the investigator is to establish the fact of committing a crime or preparing for it. The above classification will enable the investigator during the detection a certain type of crime to establish the necessity for research material, microsocial or moral-psychological environment. Thrs, when the investigator found that the actions had been committed, in which there are signs of a crime, for instance, avoidance of child support payments, the investigator concludes that it is necessary to carry out a thorough study of microsocial environment, in particular, the relationship between the offender and the victim.

[14] Куликов В. И. Обстановка совершения хищения государственного и общественного имущества как объект специального криминалистического исследования. *Методика и психология расследования хищений государственного и общественного имущества : сб. науч. тр.* Свердловск, 1986. С. 50.

The demands of practice in optimizing investigative activities, the rise of the theoretical level of the investigation process predetermine the necessity of formalization the investigation of crimes[15].

We can agree with the opinion of M.O. Selivanov, who indicated that especially the broad possibilities of the formalization method in the development of typical programs for solving individual problems of investigation which can be conventionally called partitive programs. If general programs reflect more or less complete methods of investigating certain types of crimes, then partitive are designed to solve local investigative tasks – construction versions, establishing a method of committing or concealing a crime, causes and conditions which aids it, searching for a criminal or the abduction of values and etc.[16].

Methodology of the formal description of the information structure of the investigation in the form of a hierarchical construction of interrelated events which integrated into a holistic system of the activity of investigation of crimes, and the preparation and commission of crimes[17].

It should be noted, that at the present stage of development of criminalistics scholars began to make suggestions about the necessity for development and implementation into practical activity programs and algorithms of the investigator's actions, which are aimed at optimizing and rationalizing the investigation process[18].

V.A. Zhuravel points out, that criminalistic programs and algorithms must be considered the most appropriate form of adaptation

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[15] Шевчук В. М. Тактичні операції у криміналістиці: тактичні засади формування та практика реалізації : монографія. Х. : Вид. агенція «Апостіль», 2013. С. 299.

[16] Образцов В. А. Криминалистическая характеристика преступлений: дискуссионные вопросы и пути их разрешения. *Криминалистическая характеристика пре ступлений : сб. науч. трудов.* М., 1984. С. 62–63.

[17] Шаров В. И. Формализация в криминалистике. Вопросы теории и методологии криминалистического исследования : автореф. дис. … докт. юрид. наук. Нижний Новгород, 2003. С. 9.

[18] Журавель В. Формалізація розслідування : теоретичні основи і практичні можливості. *Правн. часопис Донец. нац. ун-ту.* Донецьк, 2010. № 1 (23). С. 100; Ищенко Е. П. Алгоритмизация следственной деятельности : монографія. М. : Юрлитинформ, 2010. С. 50; Тіщенко В. В. Теоретичні і практичні основи методики розслідування злочинів : монографія. О. : Фенікс, 2007. С. 176.

of methodological and forensic recommendations to the terms of investigation of a particular crime[19].

The optimization of the process of investigating a crime is seen in the application of the program-target method which is targeting to develop relevant investigation programs[20].

For the first time the concept and content of the program-target method was defined by G. A. Gustov. He pointed out that program-targeting method is one of the methods of organizing and managing the investigation process. Under it is understood a scientific analysis, organization of investigation and receipt of new knowledge in the criminal case with the aid of pre-designed typical forensic programs[21].

S.Yu. Chuzhikov by the method of program-targeted investigation understands "organization of the leadership of the investigation process which is caused by the regularity of a criminal event, investigation activities and crime scene, in which it is conducted a technological system of typical programs and algorithms (rules and operations), which proper implementation helps to optimize the work of law enforcement officials and guarantees receipt of criminal cases of new knowledge (evidence) for timely and correct solution of the tactical tasks of the preliminary investigation"[22].

G.O. Zorin quite rightly noted, that programming as a method of rationalizing the investigation and optimizing the planning of the investigation, the contents of which are programs which is aimed at

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[19] Густов Г. А. Программно-целевой метод организации раскрытия убийств : учебное пособие. Институт повышения квалифик. прокурорско-следственных работников Прокуратуры РФ СПб, 1993. С. 94.

[20] Кузнецов П. С. Отсутствующие следы и отсутствие следов (гносеологический и онтологический аспект). *Российский юридический журнал.* 2009. № 3. С. 186; Бурданова В. С. Программа раскрытия убийств, совершенных по найму. *Южно Уральские криминалистические чтения*. Уфа[б.и.], 1999. С. 13; Шаталов А. С. Криминалистические алгоритмы и программы. Теория. Проблемы. Прикладные аспекты. М. : Лига Разум, 2000. С. 124; Кузьмин С. В. Программно-целевой метод организации расследования краж. *Проблемы предварительного следствия и дознания : сборник научных трудов.* М. : Изд-во ВНИИ МВД РФ, 1994. С. 23.

[21] Густов Г. А. Программно-целевой метод организации раскрытия убийств : учебное пособие. Институт повышения квалифик. прокурорско-следственных работников Прокуратуры РФ СПб, 1993. С. 7.

[22] Чужиков С. Ю. Программно-целевой метод в расследовании преступлений, совершенных в условиях неочевидности: Актуальные проблемы юридической науки. *Татищевские чтения : актуальные проблемы науки и практики : Актуальные проблемы юридической науки :* материалы V юбилейной международной научно-практической конференции. Тольятти : ВУиТ, 2008. Ч. 4. С. 219–225.

determining the current situation, finding out the tasks of investigation and selecting the means to achieve them[23].

According to I.O.Vozgreen, program (algorithm) of investigation is a system of information on the sequence of investigative actions which are most typical for the investigation of this category of criminal cases. Such programs are being developed for different stages of investigation by investigative situations which is the most commonly encountered however, taking into account a number of factors[24].

We can agree with the opinion of E.P. Ishchenko, , who indicates that a set of tactical tasks, which are specified by subject of proof forms the basis of the program-target complex, which, directs the tactical activity of the investigator suring working with the source of evidence and making procedural decisions[25].

As V.O. Konovalova emphasizes, in the methodics of investigation of certain types of crimes an important place belongs to tactical operations where they have significant efficiency especially in such circumstances of the investigation, where organization and efficiency are necessary and, where the loss of at least one of the components of such an operation threatens its failure. Therefore, the formulation of these operations would be useful in the form of algorithms for tasks, identified by the investigator in typical investigative situations[26].

It should be noted that the whole process of investigation of the crime, and the actions of the investigator directed to the knowledge of its particular circumstances.

The scene of crime is a significant source of forensic information which detection should be carried out through a specified program of action.

To achieve the objectives of the study of the crime scene and successful solving of tasks which pointed out to investigator in criminalistics there should be a unified system of scientific provisions

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[23] Зорин Г. А. Криминалистическая методология. Минск : Амалфея, 2000. С. 145–146.

[24] Возгрин И. А. Научные основы криминалистической методики расследования преступлений. СПб. : [б.и.], 1993. Ч. IV. С. 21.

[25] Ищенко Е. П. Криминалистика : Курс лекций. М. : Юридическая фирма «КОНТРАКТ» ; АСТ-МОСКВА, 2007. С. 176.

[26] Коновалова В. О. Ефективність реалізації алгоритмів у методиці розслідування злочинів. *Правові засади підвищення ефективності боротьби зі злочинністю в Україні :* матер. наук. конф., 15 трав. 2008р. Х. : Право, 2008. С. 170–172.

and practical recommendations based on them, in the form of a study program of the crime scene.

Study program of the crime scene is a system of recommendations for the systematization of tasks, methods and actions of an investigator to achieve the purpose of the investigation by solving specific problems which aimed at detecting, analysis and fixation of criminalistically important information the source of which is the environment where crime was preparing, committing and concealing.

The structure of the program consists of the following elements:

1) the purpose of investigating the crime scene;
2) the task of studying of the crime scene;
3) means and methods for investigating the crime scene.

In order to implement a crime investigation program, it is necessary to determine the goals of its knowledge.

"The operation of the notion of" the purpose of cognitive activity" makes it possible to distinguish in the object of cognition those sides and properties that satisfy the particular cognitive need of the subject"[27].

As S.A. Shafer noted, the goal is an ideal image of a result of activity that is ahead of the activity itself[28]. The literature indicates that, to some extent, the target may act as a system-generating factor[29].

The objectives of knowing of the crime scene can be divided into basic and additional. It should be noted that the purpose of knowing of the crime scene coincides with the purpose of the investigation in general – establishing of the crime scene.

For additional purposes, knowledge of the crime scene can be attributed:

a) extraction of forensic-sensitive information from the investigated object in relation to other circumstances of the event and the persons who took part in it;

b) detection of new circumstances relevant to criminal proceedings;

c) checking available information in criminal proceedings.

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[27] Князьков А. С. Об уголовно-процессуальном и криминалистическом понимании целей и задач следственного действия. *Вестник Томского государственного университета.* 2011. № 347 С. 100.

[28] Шейфер С. А. Следственные действия. Система и процессуальная форма. М. : Юрлитинформ, 2001. С. 18.

[29] Андреев И. Д. Теория как форма организации научного знания. М. : Наука,1979. С. 9-10.

The purpose is a real or ideal object of conscious or unconscious desire of the subject; the final result on which the process is intentionally directed. The achievement of the above result becomes possible by solving the tasks set before the investigator.

During investigating the crime scene investigator should set and solve a system of general and individual tasks. General tasks are those tasks that an investigator must solve after studying the whole system of the crime scene, individual tasks are that the one wchich investigator solves in the study of a particular environment (material, microsocial and moral-psychological).

General ones include the following tasks:

– identify the features of the crime;

– determine the type of crime which was committed;

– determine for which stage of the crime (preparation, realization, concealment) revealed the situation of the crime is typical;

– to determine the material, microsocial and moral-psychological environment in which the crime was committed;

– to determine whether the crime was committed spontaneously or its implementation was preceded by a stage of training;

– to identify changes in the crime scene that are not related to the crime;

– to determine the elements of the crime scene that are related to the crime;

– to identify the elements of the crime scene which are containing forensic information;

– to determine the presence or absence of signs of staging a crime scene;

– to identify the factors that led to the change or damage the crime scene (climatic conditions, actions of persons, etc.);

– to identify persons who caused changes in the crime scene (offender, victim, witness);

– to determine the connection of the crime scene with the method of committing a crime (which means, implements and other accessories were used to commit a crime);

– to determine the connection between the crime scene and the person of the offender;

– to determine the nature of the actions committed by the offender in the context of the crime, their algorithm and consistency;

– to determine whether the witnesses were at the time of committing the crime, the nature of their actions;

– to determine the behavior of the victim, whether they have committed acts of resistance to the offender;

– determine the connection of the crime scene with the object of the crime.

Individual tasks which should be solved by the investigator in the study of the material environment:

– to identify and fixate the system of material objects available at the time of the research;

– to identify the climatic conditions in which the crime was committed;

– to set the time, spatial characteristics of the crime scene

– to determine the source of the object's origin and the logic of its availability in the investigated crime scene;

– to identify the personal and imported features of the object;

– to determine the places of the object at the time of the commission of the crime and to commit a crime, its before criminal characteristics;

– to establish the influence of the offender on a set of objects, which make up the system of the environment and establish its nature;

– to identify and fix material traces;

– to determine the absence in the environment of the crime of material objects, which must be in it under normal conditions of its existence;

– to determine the carriers of information about the method of crime, the object of the crime and the identity of the offender and their research, analysis;

– to determine the manner in which the crime was committed, tools and means which where used to commit the crime;

– to determine the object of a criminal offense, its features and qualitative characteristics;

– to find out the identity of the offender, his characteristics, the nature of his behavior;

– to figure out the identity of the victim and the witness, their characteristics and behavior.

Individual tasks which should be solved by the investigator in the study of microsocial environment:

– establishment of information on the circumstances of the case;

– establishment of information regarding the material environment in which the crime was prepared, committed and concealed, its qualitative and quantitative characteristics;

– establishment of means by which a criminal result was achieved;

– establishment of circumstances conducive to the commission of a crime; which complicated the commission of a crime and the ways of overcoming it by a criminal;

– establishment of information about the offender's identity;

– establishment of motives for committing a crime;

– establishing information about the offender's relations with other people, labor, collective, service, family relationship, other information, which characterize the offender, as part of society and can explain the determinants of his behavior;

– establishment of information about the relationship of the offender with the victim, the presence of a conflict situation;

– establishing information on the method of crime, the object of the attack.

The study of the moral and psychological environment provides the opportunity to establish moral and psychological conditions in which there were participants of the crime in the preparation, implementation and concealment of a crime.

Individual tasks which should be solved by the investigator in the study of moral and psychological environment:

– to determine the moral and psychological conditions in which the process of preparation, realization and concealment of a crime proceeded;

– to identify the moral and psychological circumstances that contributed or prevented the process of preparation, implementation and concealment of the crime;

– to determine the moral and psychological relations between the perpetrator and the victim;

– to determine the moral-psychological relationship between the offender and other actors of the crime.

The solution of the above tasks will enable the investigator to obtain information regarding the occurrence of the criminal event in conditions which they are being investigated, the person of the offender, the way in which the crime was committed, the object encounter, to determine valid

versions and to make decisions and decide regarding the planning of the further investigation.

Effective application of the crime investigation study program is possible with the aid of the step-by-step task solving the tasks facing the investigator. Efficiency and rationality of problem solving depends on the system of successive actions aimed at investigating the crime.

Investigation of the crime scene as an object of knowledge becomes possible by using the system of means of cognition, which are established by procedural legislation – investigative (searches) actions and the secret investigator (searches) actions, as well as through operational-search activities which are provided by the relevant law. The system of means by which the knowledge of the crime scene is carried out is the unity of certain components, which are interconnected with each other and constitute a sustainable organization. Means of knowledge of the crime scene have the same object of knowledge. They are combined for the similar purpose – establishing the circumstances of a criminal offense for its effective and prompt investigation.

CONCLUSIONS

For criminalistics has interest the study of the properties of the person, which determine the processes of preparing, committing and concealing a crime, as well as has the features to be displayed in the environment, thud while interacting with other elements of the environment to cause the appearance of the effect of each other. Since the person of the offender directly interacts with the environment, in the commission of a crime, for criminalistics is also of interest to study the environment, in particular the scene of crime.

The crime sscene and the person of the offender as elements of a united structure of the crime are in mutual dependence and linked by relevant links at the stage of preparation for a crime, his commission and subsequent concealment.

The environment in which the offender is located indirectly or directly influences his behavior. The situation of the crime determines the behavior of the offender, affects the decisions that offender takes, participates in the formation and change of motive, intent, directs his actions.

It should be noticed that the offender also affects the crime scene. During the preparation for a crime the person of the offender is studying

and assesses the scene of crime and shapes its model for the future, in other words, makes a forecast. If the crime scene and its predicted model are in line with the requirements for a successful criminal offense the offender will commit the crime without significant change in the crime scene.

If the crime scene is unfavorable for the commission of the crime, the offender will take action on its conversion changes to create favorable conditions for committing a criminal act. In case the change in the unfavorable the crime scene is impossible the offender may refuse to commit a crime at all.

Also, acting in the crime scene the offender leaves in it the results of the interaction which changes its original state. Investigation of the crime scene gives opportunity to get information about the person of the offender, the features of his character, criminal qualification, mental health and other information which make it possible to identify the person who committed the crime.

Knowledge of the crime scene investigator occurs at the empirical and theoretical levels. The investigator discovers the environment in which the crime was committed, carries out its research, finds criminolistically meaningful information, defines the relationship with other circumstances of the crime. Thus, the crime scene during conducting a pre-trial investigation serves as the object of knowledge which is entering into the interaction with the subject of knowledge (investigator or other authorized person) provides the ability to detect and record information, which matters for crime investigation.

In realizing the scrutiny of the crime scene the investigator should use a certain program of its research, in particular a system of recommendations for systematization of tasks, methods and actions of an investigator to achieve the purpose of the investigation by solving specific problems aimed at detecting, analyzing and fixing criminolistically meaningful information the source of which is the environment in which the crime was prepared, committed and concealed.

The study program of the crime scene consists of the following elements:

a) the objectives of investigating of the crime scene;
b) tasks of investigation of the crime scene;
c) methods and means for investigating of the crime scene.

The main purpose of the study of the crime scene is to establish the circumstances of the crime.

Additional objectives of the study of the crime scene include the following:

a) obtaining criminolistically meaningful information from the investigated object in relation to other circumstances of the event and the persons who took part in it;

b) identification of new circumstances that are relevant for criminal proceedings;

c) checking available information in criminal proceedings.

During investigating the crime scene, the investigator should set general tasks, which determine the direction of investigation of the whole crime scene. Moreover, investigator should set certain tasks to be solved in the study of the relevant environment, which is part of the internal structure of the crime scene (material, microsocial and moral-psychological).

As a means by which research of crime scene is carried out the investigator uses directly the appropriate investigative actions, as well as operational-search activities.

To obtain a coherent picture of the conditions in which the crime was committed for a comprehensive and complete investigation of the crime scene the investigator should use a systematic approach to conducting investigative actions. The system which is used by him should be clearly formed, planned and carried out according to a certain algorithm.

System in the application of appropriate means of investigating the crime scene will provide an opportunity for their rational and effective use in order to obtain criminolistically meaningful information crime investigation.

The scene of a crime includes a set of information that forms a certain information environment in the investigation of which an investigator forms an evidentiary basis, which is necessary to investigate the crime and establish its appropriate circumstances.

Depending on the nature of the information containing the crime scene, its sources, ways of detection and fixing it can be defined as evidence. Thus, the crime scene can act as a system that is the bearer of evidential information.

Thus, the commission of each crime is accompanied by a certain set of realities of reality, which directly or indirectly influence all stages of the implementation of a criminal act. It is the crime situation, as a

complex category, which includes in its composition a number of interrelated elements, allows forming a holistic perception of a set of conditions, in which a crime was committed.

SUMMARY

The importance of information about the crime scene for crimes investigation is considered in the article. The significance of the data about crime scene for the cognitive activity of the investigator is scrutinized. Moreover, the importance of data about the crime scene for the construction of the versions and planning of the investigation is mentioned. The definition of the scene of crime and its significance for criminalistics science is disclosed. The significance of the algorithmic activity of the investigator is considered. The programe of crime scene scrutiny by the investigator is proposed. The structure of the program and methods of its application is established.

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ADMINISTRATIVE SERVICES PROVISION IN LICENSING SYSTEM OF THE NATIONAL POLICE OF UKRAINE: GENESIS AND POSSIBILITIES OF FOREIGN EXPERIENCE USE

Fomenko A. Ye.

INTRODUCTION

Law enforcement by preventing and eliminating of offenses, as well as bringing guilty persons to justice, is one of the primary tasks of the modern legal state. This is because the protection of law and order along with the national security is a guarantee of respect for citizens' legal rights and interests. In the exercise of this state function, a significant role is played by public authorities, which are empowered with this purpose by the controlling and supervisory powers.

Of particular importance here are the permit functions of law enforcement agencies aimed at monitoring the observance by individuals and legal entities of special rules and procedures for the storage and use of weapons, special personal protective equipment and active defense, ammunition, explosives, other objects, materials and substances to which the licensing system is applied.

In such circumstances, the priority activity of the government is the establishment of an effective mechanism for the exercise of permit powers in relation to such objects of the licensing system by the competent authorities.

In particular, at the present stage of the state establishment in Ukraine, an important element of such a mechanism should include the activities of bodies and units of the National Police of Ukraine, which provide administrative services to citizens. Thus, the special place of this central body of state power in the licensing system of the country is justified by the fact that the creation of a new service today, represented by the National Police, is one of the conditions for the formation of a democratic, legal and social Ukrainian state.

Along with this, it is necessary to pay attention to the international aspect of solving the problem of a new police force creation, which will provide the Ukrainian citizens with administrative services, including

the field of permission. In particular, reformation of the system of the Ministry of Internal Affairs of Ukraine and improvement of its organizational foundations and functioning principles is carried out in line with global civilization processes, which not only lead to external changes in the mechanism of law enforcement activity, but also leave a significant imprint on the ideological basis of the society existence, transform the idea of political power, its nature and limits of implementation, the state power and civil society power ratio.

1. Genesis of administrative services provided by the National Police of Ukraine

Administrative services provided by the National Police of Ukraine as a subject of scientific research in Ukraine have emerged not so long ago. This is due to a number of objective circumstances. In particular, in the science of the Soviet era, such studies were lacking at all, based on the very approach to understanding the purpose and functioning of law enforcement agencies. For example, in the Soviet period, the militia (from the Latin “militia”- people's army) was regarded as a workers 'and peasants' voluntary formation, which was formed and operated to protect the interests of the state. In Ukraine the workers 'and peasants' militia was established by a decree of the Council of People's Commissars of the Ukrainian Socialist Soviet Republic dated February 9, 1919, which stipulated that the main task of the militia was to protect the revolutionary order, as well as to combat "criminal elements which were the result of capitalism". For many years, the police were perceived as a purely state body that represented exclusively the interests of the state and were, so to say, "away from" the community needs.

Therefore, taking into account such an approach to the activities of Soviet-era law-enforcement bodies, there was no scientific development in the provision of these services to the citizens, unlike in foreign studies. The police functioned abroad (from the Latin politia - government), was defined as a highly qualified, professional, armed body of legal order, which was designated by the state to protect the rights and safety of citizens and their property. It should be noted that earlier the police were also perceived as militarized units protecting the interests of the state, but in the 1960s practically all Western European countries have proclaimed a course for large-scale reform of law enforcement agencies. As a result, the police turned into an authority

whose main function is to provide services to the public, protect rights and freedoms of the man and the citizen[1]. Such reform was based on the elaborations of public services, where the state through the authorities acts in the interests of the citizen and serves for their benefit, and not vice versa, as it was in the USSR.

The achievements of the Soviet era can be used to define the development of scientists in the study of the general administrative activity of the police, in the context of which it is possible to identify those directions and actions that were related to the area of the internal affairs functioning as a service.

The first to address this issue was L.M. Rozin, who defined the police administrative activity as follows: this activity focuses on the administrative supervision, the implementation of passport and permit systems, ensuring the safety of traffic and pedestrians[2]. In this definition, the scientist defines the areas of administrative activity, but it does not take into account the external component of the operation of the police, namely, public order protection.

Another researcher, M.I. Yeropkin, in his scientific work "Management in the field of protection of public order" determined that the police administrative activity comprises the organization and practical implementation of its bodies and in close connection with a wide range of public functions of public order, law, rights and interests of citizens by administrative legal means and in the administrative legal forms[3]. In our opinion, this definition is quite abstract, in which there is no indication of the specific content and forms of such police activity. In addition, the definition does not include such important areas of administrative activity as the implementation of the permit system and road safety.

The most accurate and comprehensive concept of administrative activity was formulated by F.Yu. Kolontayevskiy. According to this scholar, the police administrative activity should be understood as executive-administrative activity, which focuses on the provision of

[1] Ратушняк В. Перспективні шляхи удосконалення управління міліцією громадської безпеки в Україні. *Вісник Київського національного університету імені Тараса Шевченка. Серія: Юридичні науки*. 2013. № 2 (96). С. 12–16. С. 14

[2] Советское административное право / под ред. А. Е. Лунева. М. : ВЮЗИ, 1960. С. 147.

[3] Еропкин М. И. Управление в области охраны общественного порядка. М. : Юр. лит., 1965. С. 83–84.

foreign service, ensuring the safety of traffic and pedestrians, the implementation of passport and permitting systems and directed through various preventive measures, administrative supervision, issuance of management acts, conclusion of contracts on protection of objects, implementation of other legally significant actions and logistical actions in public order maintenance, protection of national interests and citizens' rights from criminal and other anti-social attacks[4]. In our opinion, for that period of time this definition is fully reflected the content and forms of police administrative activity, as well as the area of legal relations of its implementation. Such provisions formed the basis for further scientific development of this issue and research, the subject of which was the provision of administrative services of law enforcement agencies in the post-Soviet period in Ukraine before the formation of the National Police.

Thus, in the early 1990-s, due to the declaration of independence of Ukraine, the development of its statehood, and at the same time the formation of a new state apparatus, new approaches to organizing the functioning of state power in general and law enforcement agencies, in particular, began to emerge. In this context, due to the fact that the internal affairs bodies referred to the executive branch of the government, it should be considered how the concept of "administrative" or "administrative services" in the activity of public authorities began to be fixed at the legislative level.

The Concept of Administrative Reform of 1998 was one of the first acts of domestic legislation that referred to the concept of management services. In this Concept, the primary task is to introduce a new ideology of functioning of state executive bodies and local self-government bodies as an activity to ensure the implementation of citizens' rights and freedoms and provide them with quality management services[5].

The next step of the legislators in this direction was the measures to implement the main areas of competition policy for 2002-2004, approved by the Decree of the President of Ukraine of November 19,

[4] Колонтаевский Ф. Е. Обеспечение социалистической законности в административной деятельности милиции : автореф. дис.. …канд. юрид. наук : 12.00.07. М., 1970. С. 9.

[5] Про заходи щодо впровадження Концепції адміністративної реформи в Україні : Указ Президента України від 22 липня 1998 р. № 810. *Офіційний вісник України.* 1999. № 21. С. 32.

2001 No. 1097, which provided for optimization of the economic activity of executive bodies and local self-government bodies[6].

However, for the first time at the state level, the issue of administrative services was mentioned in the Concept of Development of the System of Provision of Administrative Services by Executive Bodies in 2006. Though, only in 2008 some of its provisions began to be put into practice (the result of which is Government Decree No. 737 "On the streamlining of administrative services" of July 17, 2009[7]), which were primarily concerned with the task of eliminating enterprises, institutions, organizations providing "public and administrative services", or deprive them of their respective powers. The Temporary Procedure for the Provision of Administrative Services, approved by the aforementioned Decree, also defined certain limits for the provision of administrative services; the procedure for directing funds to the budget received for administrative services; requirements for the provision of information on administrative services and some other requirements for entities providing administrative services[8].

The final legislative act governing public relations related to the provision of administrative services by state authorities and local self-government is the Parliament-approved Law on Administrative Services of September 6, 2012. Its main positive aspects can be considered:

- the responsibility of local governments and district state administrations to set up administrative service centers (ASCs);

- a legal ban on requiring documents and information that are already in the possession of administrative service providers or which they can obtain independently;

- streamlining internal procedures for the provision of administrative services (through the introduction of technological service cards) and the provision of convenient information for service

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[6] Про основні напрямки конкурентної політики на 2002–2004 рр. : Указ Президента України від 19 листопада 2001 р. № 1097/2001. *Офіційний вісник України*. 2001. № 47. С. 14. Ст. 2056.

[7] Про заходи щодо упорядкування адміністративних послуг : Постанова Кабінету Міністрів України від 17 липня 2009 р. № 737. URL : http://zakon5.rada.gov.ua/laws/show/737-2009-%D0%BF.

[8] Тимощук В. П. Адміністративні послуги: проблеми теорії, законодавства і практики в Україні . Адміністративне право і процес. 2014. № 3(9). С.104–120. URL: http://applaw.knu.ua/index.php/arkhiv-nomeriv/3-9-2014-jubilee/item/383-administratyvni-posluhy-problemy-teoriyi-zakonodavstva-i-praktyky-v-ukrayini-tymoshchuk-v-p.

users (through the obligation to provide wide information and the introduction of administrative service information cards);

- introduction of a unified concept of "administrative fee" as a single payment for paid administrative services;

- guaranteeing a minimum number of hours for reception of applicants[9].

According to Art. 5 of the above Law, the administrative services are as follows: issuance of licenses, permits and other permit documents: for activities of a certain type, for certain works and services, for certain objects (land, house, building, their complexes, premises, equipment and mechanisms to be put into operation or designed, others) and operations with them; registration of: facts, subjects, rights, objects, including legalization of subjects and acts (documents); accreditation, attestation and certification, nostrification and verification; other activities that result in the granting or confirmation of a certain legal status to the interested individuals and legal entities, as well as to objects owned, or used by them.

According to the Law of Ukraine "On Administrative Services", the subject of administrative service provision is the executive authority, other state body, local self-government body, their officials authorized under the law to provide administrative services[10].

The Ministry of Internal Affairs of Ukraine can certainly be attributed to public authorities, which, under current national law, have the power to provide administrative services. In particular, the analysis of the Regulation on the Ministry of Internal Affairs, approved by Presidential Decree No. 383 of April 6, 2011, indicates that there is a substantial amount of work related to the issuance of permits, registration of entities, rights, objects, etc. At the same time, the Regulation emphasizes that such work must be carried out either within the competence or within the powers of the relevant units of the Ministry of Internal Affairs of Ukraine[11].

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[9] Тимощук В. П. Адміністративні послуги: проблеми теорії, законодавства і практики в Україні . Адміністративне право і процес. 2014. № 3(9). С. 107–108. URL: http://applaw.knu.ua/index.php/arkhiv-nomeriv/3-9-2014-jubilee/item/383-administratyvni-posluhy-problemy-teoriyi-zakonodavstva-i-praktyky-v-ukrayini-tymoshchuk-v-p.

[10] Про адміністративні послуги : Закон України від 6 вересня 2012 р. № 5203-VI. *Відомості Верховної Ради України*. 2013. № 32. Ст. 409.

[11] Про затвердження Положення про Міністерство внутрішніх справ України : Указ Президента України від 06 квітня 2011 р. № 383. URL : http://zakon3.rada.gov.ua/laws/show/383/2011.

At the same time, activities related to the provision of services for the issuance of permits, licenses, certificates, etc. by public authorities, in particular law enforcement agencies, were in fact carried out prior to the emergence of normative consolidation of this type of activity as administrative services. The respective powers of law enforcement agencies in accordance with the tasks assigned to them were enshrined at the level of decrees of the Cabinet of Ministers of Ukraine, as well as interagency or departmental orders registered with the Ministry of Justice of Ukraine. An example is the following normative acts: Decree of the Cabinet of Ministers of Ukraine of December 25, 2002 No. 1952 "On Approval of the List of Paid Services that can be Provided by Customs Bodies", as amended in accordance with the Decree of the Cabinet of Ministers of Ukraine No. 92 of January 18, 2003 p .; Decree of the Cabinet of Ministers of Ukraine of June 4, 2007 No. 795 "On Approving the List of Paid Services that may be Provided by Bodies and Subdivisions of the Ministry of Internal Affairs", as amended in accordance with the Decrees of the Cabinet of Ministers of Ukraine of January 28, 2009. No. 65 and from July 1, 2009 No. 724; Decree of the Cabinet of Ministers of Ukraine of November 14, 2000 No. 1698 "On Approval of the List of Licensing Bodies" in the version of March 25, 2010, based on the Decree of the Cabinet of Ministers of Ukraine of March 17, 2010, No. 275.

When defining the emergence of management services in legislative acts, it is necessary to point out the ambiguity of definitions in the normative practice of the concepts of state, public, administrative services, as well as the use of the latter as synonyms. At the same time, the situation where some legal scholars questioned the very possibility of using the category of "services" for the activities of authorities exercising powers, obliged scholars to study the problems of administrative services, including those provided by law enforcement agencies. The importance of defining the concept in the applied aspect was substantiated by the presence of the problem of scientific research of the phenomenon and the need to develop a strategy and tactics for improving the public effectiveness of public authorities' activity, including law enforcement agencies, while providing services[12].

[12] Шапоренко М. М. Адміністративні послуги правоохоронних органів: до проблеми понятійного апарату. *Право і суспільство*. 2011. № 5. С. 120

Therefore, along with the statutory determination of administrative services, among scholars there was the formation of scientific views on the activities of law enforcement agencies in the field of administrative services to the public. It should be noted that in the administrative law science the category of "administrative services of law enforcement agencies" was debatable, which aroused considerable interest among scholars in the field of law. Scientific researches of this category is important for the formation of a modern understanding of such a new legal phenomenon as "police administrative services", since the central executive body, represented by the National Police of Ukraine, arose from the liquidation of the police and performs a large part of the functions previously owned by the this internal affairs body. In this regard, it is considered appropriate to analyze the views of administrative scientists on the definition of "administrative services of law enforcement agencies", which will allow to improve approaches to clarify the nature and content of police service, in particular with regard to the provision of administrative services at the present stage reforming the system of the Ministry of Internal Affairs of Ukraine.

Summarizing the above stated, it should be noted that the political, economic and social renewal of society in the course of a democratic legal state creation has caused the need to bring legal, organizational, structural and other foundations of the functioning of state executive bodies in line with the new conditions of their activity and development[13]. The activity of the police in the provision of administrative services, which, in our opinion, should first of all be directed, first of all, to ensuring the realization of the rights, freedoms and legal interests granted to individuals and legal entities has not become an exception; secondly, the establishment of partnerships between the units of the National Police of Ukraine and the population, which became possible during the transition of the police from punitive, repressive and control activities to servicing and supervision one.

Thus, the creation of the concept of administrative services in the field of jurisprudence provided by the National Police of Ukraine is not aimed at introducing a separate type of administrative and legal relations

[13] Іншин М. І. Правове регулювання вивільнення працівників органів внутрішніх справ України : навчально-практичний посібник ; за ред. В. С. Венедиктова. Харків : Ун-т внутр. справ, 2000. С. 74.

between law enforcement agencies and the individual, but to review the relationship between them, since the supremacy of law is implemented in terms of its content. First and foremost, the changes provide the replacement of the "state domination" ideology in the past into the ideology of "state service" to the interests of man[14]. And such serving will be manifested through the quality of administrative services provided to the citizens by the public authorities in general and the National Police bodies in particular.

2. Foreign experience in providing administrative services

Analyzing the foreign countries' experience, in particular the European Union member states in the administrative services provision, it should be noted that it is extremely important for our country, since the Ukrainian state has chosen the European vector of development and is undergoing a radical reform of approaches to the organization of functioning of public authorities, by decentralization of power and creation of civil society. It is therefore important, when carrying out reforms in the administrative services sector, to pay attention to the principles that serve as a common platform for the development of the administrative services system in the European Union, in particular:

- the principle of subsidiarity and proportionality. It requires the governing bodies to make administrative service decisions as closely as possible to consumers, that is, to provide administrative services at local, regional, national or European Union level, where their provision is considered the most effective. Proportionality restricts the actions of the higher authorities only to what is necessary to achieve the policy goals agreed with other levels of government, that is, to ensure the maximum freedom of decision of the participating countries;

- the principle of orientation towards consumers, citizens and enterprises, whose needs are determined by the list and procedure for the administrative services provision. Beneficiaries' needs include: 1) secure and flexible access (personalization of services); 2) multichannel (maximum availability); 3) "single window" (receiving administrative services in one place, even if the service is provided jointly by several bodies); 4) discontinuity (avoiding re-provision of information required

[14] Денисюк Д. С. Визначення адміністративної послуги в діяльності органів внутрішніх справ. *Актуальні проблеми державного управління*. 2008. № 2. С. 405

to receive services); 5) mutual trust (keeping confidential and private data);

- the principle of public access, that is to say, to create equal opportunities at all levels for all citizens and companies of the European Union countries without any discrimination;

- the principle of security (confidentiality). It means that the authorities must guarantee the privacy of citizens' privacy and the confidentiality of information received from business entities. Considering safety requirements, consumers have the right to control the use of management information collected about them for declared purposes[15];

- the principle of multilingualism must also be taken into account, since without it it's impossible to ensure the observance of guaranteed rights and freedoms, accessibility, quality, multilateral cooperation in the process of providing administrative services in a multi-ethnic, multilingual environment, which is the EU;

- the principle of administrative simplicity. It provides for simplification of procedures for citizens and businesses to reduce their administrative costs;

- the principle of transparency, which ensures that the process is understandable, as well as the right of recipients to have an idea of the mechanisms for making decisions regarding the provision of appropriate administrative services;

- the principle of sustainability of information. It is implemented in various forms of documentation of procedures and decisions regarding administrative services, i.e. maintaining the integrity, reliability and accuracy of information over a long period of time, taking into account the conditions of security and confidentiality;

- the principle of openness, reflecting the willingness of individuals, businesses and organizations to share experience and aiming to increase participants' knowledge in order to solve priority problems in the field of administrative services;

- the principle of experience exchange. It means that governing bodies should share with other concepts, methods, procedures that have proven themselves well in practice;

[15] Сєніна А. О. Особливості та організаційний досвід надання адміністративних послуг у країнах ЄС. *Бізнес Інформ*. 2014. № 8. С. 25–33.

- the principle of adaptability. Its essence is that governing bodies focus efforts on the implementation of administrative services that are able to adapt in a changing socio-economic environment, regardless of the place of their provision and the recipient of services;

- the principle of efficiency and effectiveness. It envisages the creation of an environment that provides administrative services to the maximum number of businesses and citizens with minimal costs (cost-benefit optimization), taking into account other principles such as adaptability, simplicity, security, etc.[16]

The use of foreign experience in the organization of work on the provision of administrative services by public authorities also concerns the sphere of operation of law enforcement agencies, and in particular the police. This is due to the fact that overseas reform of state authorities in matters of interaction with citizens occurred along with the reorientation of police bodies from a punitive body to a public service, which should act for the benefit of the population and provide it with appropriate services. Therefore, a new approach to law enforcement is becoming more widespread today as an organization that provides services to the public in the field of law enforcement, including services aimed at protecting citizens from unlawful encroachment.

This position was reflected in a number of national and international documents as early as the 1970s. As outlined in the Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly on December 17, 1979, service to the community is, in particular, to provide services and assistance to members of the community who, for personal, economic, social or other reasons of urgent need for assistance. The partial transformation of law enforcement into a service will significantly improve the efficiency of the work of law enforcement by bringing its professional activity closer to the population, while reducing the repressive measures of influence. The priority should be given to the prevention of offenses, not to the elimination of their harmful consequences[17].

Considering the possibility of implementing the foreign experience of the service function by the police authorities, it should be noted that the first European Congress on Police Quality Management, held in

[16] Сєніна А. О. Особливості та організаційний досвід надання адміністративних послуг у країнах ЄС. Бізнес Інформ. 2014. № 8. С. 27.

[17] Суббот А. Застосування в Україні передових світових стандартів організації ефективної діяльності правоохоронних органів. *Віче*. 2014. № 10. С. 7.

Munster (Germany) in March 1998, was an indicator of the introduction of the concept of quality management to the field of policing. The Congress identified the main approaches for creation of a new model of police activity and emphasized that, firstly, the police are seen as a body that provides services to the population in a particular territory, and secondly, the police should exist for the citizens, developing for them the system of services[18].

Police transformations in the countries of Central and Eastern Europe (Germany, Hungary, Poland, Slovenia, Czech Republic, Bulgaria, Balkan countries, Russia) indicates the influence of international principles and standards on the police reform processes, on the sphere of internal affairs management in general, which have resulted in the processes of demilitarization, democratization and depolitization of police bodies[19].

The strive to efficiency and quality assurance of the services provided to the public, improvement of their organization and distribution among the authorities is determined today as the strategic direction of police development in many countries of the world. In particular, at the Munich Congress in 1998, in defining the main approaches to construction of a new model of police activity, it has been emphasized that police should exist for citizens and therefore be regarded as a body providing services to citizens in a particular territory. Therefore, the service system needs further development[20].

Based on the above provisions, the functioning of police structures in the developed countries of the world is associated with the provision of quality services to the population. Today, the state and its bodies, including internal affairs, are gradually turning into a service-oriented organization with a wide range of social services, given that the key to ensuring the effectiveness of their activity is the degree of satisfaction of

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[18] Beyley D. 2001. Demokratizing the Police Abroad: What to Do and How to Do із Washington. British Delegation to the Czech Republic. 1991. 2nd Report. Sep. 1991. London. P. 13.

[19] Легеза Є. Зарубіжний досвід правового регулювання адміністративних послуг, що надаються органами влади та його впровадження в діяльності міліції України. URL : http://radnuk.info/home/24281-2013-05-29-18-09-07.html.

[20] Toronto Police Services Organizatiohal Chart : approved by the Toronto Police Services Board on Feb. 21, 2008. Офіційний веб-сайт поліції Торонто, Канада. URL : http://www.torontopolice.on.ca/orgchart.pdf; Іншин М. І. Правове регулювання вивільнення працівників органів внутрішніх справ України : навчально-практичний посібник / За ред. В. С. Венедиктова. Харків : Ун-т внутр. справ, 2000. 159 с.

civil society actors. This necessitates the search for new concepts and models of policing and requires a study of police service provision in the light of changes in the service market[21].

Law enforcement agencies in most countries of the world are actively using the Community Policing model, which combines dual crime fighting with police structures and members of the public. Community Policing, in fact, has become the new philosophy of policing, according to which the police are formed in accordance with the principle of decentralization of its structure, acting on a proactive basis in close cooperation with citizens, jointly identifying problems and solving them[22]. According to this model, there have been changes in the work with police personnel. Studies show that this concept increases police satisfaction with their work, positively changes the motivation of their work, expands the role of police officers in society, improves the relationship between the police officers themselves, and between police officers and civilians[23].

In the Czech Republic, the main tasks of ensuring the performance of the service function, according to the Police Act adopted in 1991, are assigned to regional and municipal police, whose units are more flexible to local problems than national police. An example of organizational changes to the service of ordinary citizens by the police is the creation of a so-called "Complaint Table" at each police station[24].

The London Police Department has the London Ambulance Service, The London Emergency Services Liaison Panel, providing free medical services to the public in the event of an accident or emergency, as well as transportation services to health facilities, providing special comfortable conditions for the seriously ill. At the same time, the administration worked on the development and improvement of service to the population in accordance with the Improvement Program for

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[21] Кріцак І.В. Теоретико-правовий аналіз існуючих моделей функціонування поліції та проблема реалізації функції надання послуг населенню органами внутрішніх справ. *Право і безпека*. 2013. № 1 (48). С. 23–29.

[22] Hauer V. D. Police in Western Europe. Bonn, 1992.

[23] Дегтярев Л. М. Максименко Н. П., Соловьева М. Г. Полиция буржуазных государств. М., 1966. С. 44; Бесчастний В. Міжнародний досвід у діяльності міліції України. *Віче*. 2009. № 24. URL: http://www.viche.info/journal/1780.

[24] Окопник О. М. Органи внутрішніх справ в організаційно-правовому механізмі реалізації виконавчої влади в Україні : дис. … канд. юрид. наук : 12.00.07. Харків, 2007. С. 78.; Organization of the Czech Republic police force. Офіційний веб-сайт поліції Чехії. URL: http://www.czech.cz/en/czech-republic/security/security-forces/theczech-republic-police-force.

2001-2006, which was aimed to achieve the level of service of world quality standards[25].

The reform process in the mid-1990s in Canada was based on financial principles, resulting in a significant reduction in the number of public servants, including the Ministry of Public Works and Public Services, which led to a mass discussion of the quality of service provision in the country as a result of such activities. The reforms have resulted in the building of a new service provision system. The organizational structure of the Toronto Police Offices (Canada), approved on December 21, 2008, did not envisage separate service units, as the concept of "service" has a literal meaning - "serve" the people[26]. That is, the very functioning of the police was already regarded as the provision of law enforcement services. In this case, information, logistical and communication units act as business entities, in addition to servicing police units[27].

Concerning the licensing system of police services, Georgia's experience is interesting. The Service Agency of the Georgia's Ministry of Internal Affairs operates in this country. It is a unit that provides any services related to vehicles, including customs clearance, acceptance of payments related thereto, expert review, state license plate production, driver's license and theoretical and practical examination for its issuance, issuing permits to purchase different types of weapons, registering and reissuing them, providing criminal records, fulfillment apostil functions, etc.[28]

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[25] Матюхіна Н. П. Поліція Великобританії: сучасні тенденції розвитку та управління : монографія ; за заг. ред. д-ра юрид. наук, проф. О. М. Бандурки. Харків : Консум, 2001. С. 56.

[26] Toronto Police Services Organizatiohal Chart : approved by the Toronto Police Services Board on Feb. 21, 2008. Офіційний веб-сайт поліції Торонто, Канада. URL: http://www.torontopolice.on.ca/orgchart.pdf.

[27] Бандурка О. М. Міліція і населення: Теорія і досвід партнерства : монографія. Харків : Вид-во Нац. ун-ту внутр. справ, 2004. С. 57; Легеза Є. Зарубіжний досвід правового регулювання адміністративних послуг, що надаються органами влади та його впровадження в діяльності міліції України. URL: http://radnuk.info/home/24281-2013-05-29-18-09-07.html

[28] Service agency. Офіційний веб-сайт Міністерства внутрішніх справ Грузії. URL : http://police.ge/ge/lepl/momsakhurebis-saagento?sub=488; Україна ознайомилась з позитивним досвідом реформування ДАІ Грузії. - 30.11.2011. Офіційний портал Всеукраїнської спеціальної колегії з питань боротьби з корупцією та організованою злочинністю. URL : http://vsk.kiev.ua/index.php?option=com_k2&view=item&id=401: ukraina-oznaiomylas-z-pozytyvnym-dosvidom-reformuvannia-dai hruzii&Itemid=192 &lang=ua.

For example, to obtain a permit to purchase a weapon, the following documents must be submitted to the Georgia Police Service: a statement; receipt for the purchase of weapons; ID card or residence permit, proof of residence; health certificate, approved by the Ministry of Labor, Health and Welfare of Georgia form. In addition, you must provide a document confirming the payment of the permit to purchase weapons and a receipt confirming the payment for service, in particular, it is a matter of registering a weapon. This permit can be issued within one business day. Thanks to the state-of-the-art computer system, there is no need to provide additional certificates, various kinds of certificates from other institutions to obtain any permit document, which makes it easier to issue the required document to the citizen[29]. The system is designed so that people do not spend much time on bureaucratic procedures. As a result, virtually all the queues have disappeared, although thousands of people are served at the Police Service Agency daily.

Thus, in Georgia, the provision of administrative services by the police is based on world standards, where a person acts as prime value and quality satisfaction of his needs is a top priority in the functions of public authorities. Therefore, Georgia's experience is an example for other post-Soviet countries, including Ukraine, in reforming the Ministry of Internal Affairs of Ukraine and organizing its activities to provide administrative services to the public.

Concluding, it should be noted that studying the best practices of organizing the provision of administrative services in foreign countries will enable to develop strategically important directions and specific means for reforming the area of providing such services to public authorities in Ukraine. It should be noted that the main areas of improvement of the organization of administrative services in developed countries were and remain: decentralization of the provision of administrative services through delegation of such powers to local authorities or private organizations on the basis of contractual-contractual form of relations with the latter "Denationalization of

[29] Мирошник Я. Подолання корупції в Грузії: висновки для України. URL : http://www.transparentukraine.org/?p=6931; Україна ознайомилась з позитивним досвідом реформування ДАІ Грузії. - 30.11.2011. Офіційний портал Всеукраїнської спеціальної колегії з питань боротьби з корупцією та організованою злочинністю. URL : http://vsk.kiev.ua/index.php?option=com_k2&view=item&id=401:ukraina-oznaiomylas-z-pozytyvnym-dosvidom-reformuvannia-dai hruzii&Itemid=192&lang=ua.

services" (privatization, use of private sector methods in public institutions, etc.); creation of the most convenient and affordable conditions for obtaining services to consumers (in particular, the development of the idea of integrated offices - centers operating on a "one-stop-shop" principle); implementation of information technology for service provision. This applies both to the digitization of individual services and to the creation of public service portals (eg, www.service-public.fr (France), www.servicecanada.gc.ca (Canada)); defining the list of administrative services through monitoring the opinions of consumers, i.e. citizens; establishing partnerships between the state and its population, where the citizen is a customer (consumer) and the state, through authorized bodies, acts as a service element in meeting its needs; clear control over the quality of the services provided and determination of the level of satisfaction of citizens with receiving it; introducing sound decision-making procedures that minimize the conditions for corruption and abuse.

In addition, analyzing the experience of foreign countries in the field of administrative services, we support the proposal of V.B. Averyanov and I.O. Dragan, which is the need to adopt the Administrative Procedure Code. This position is justified by the fact that this regulatory act should regulate the general procedure for the provision of administrative services, starting with the rules on registration of the request for service and ending with the procedure for appealing the decisions of the authorities. Problems with the organization of the provision of administrative services require further elaboration and legislative regulation in Ukraine on a uniform methodological basis[30].

It is also an important mission of our legislation to support supervision over bodies that will meet the needs of citizens by providing them with appropriate services. The Netherlands experience, where an ombudsman institution operates and regulates and monitors the performance of their duties, may be helpful[31].

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[30] Авер'янов В. Б. Виконавча влада і адміністративне право**.** Kb]s : Видавничий Дім «Ін-Юре», 2002. С. 356; Драган І. О. Організація надання публічних послуг населенню органами влади: зарубіжні практики. *Державне управління: удосконалення і розвиток*. 2014. № 4. URL : http://www.dy.nayka.com.ua/ ?op=1&z=703.

[31] Тищенкова І. О. Європейський досвід захисту прав громадян у сфері надання адміністративних послуг та напрями його впровадження в Україні. *Науковий вісник Дніпропетровського державного університету внутрішніх справ*. 2013. № 3. С. 249.

In Ukraine, it is necessary to continue the practice of opening centers for providing administrative services to the population. When you create them, you should consider the number of clients they will serve, which has not yet been done. For example, the Berlin Universities of Services are created at the rate of fifty-sixty thousand inhabitants, which ultimately affects the number of staff and the quality of the services provided. It is also advisable in Ukraine to set up mobile administrative service centers that will operate in remote settlements.

Also, in the process of work of department stores, we propose to use as much as possible the capabilities of modern information technologies – electronic queue management system, formation of unified databases of access, use of opportunities of remote access to information, application for a permit or license by e-mail, etc. This will reduce the time required to obtain the required service and generally improve the quality of the latter[32].

In the context of reforming the Ministry of Internal Affairs of Ukraine and the activities of the National Police as a public service entity, the foreign experience in this matter should also be taken into account. Today, police officers need to perceive citizens not only as partners but also as their clients. And, accordingly, to plan the work in such a way that the law-abiding citizens do not receive any complaints about the quality of police service. The main task of the police at the present stage in Ukraine should be to serve first of all the society, the citizens, and then the state and the government. In this context, it is positive that the Law of Ukraine "On the National Police" came into force 7 November 2015 reflects in its provisions the global trends in the designation and functioning of such a body. Namely, such provisions are that the National Police is defined by the central body of executive power, which serves the society through the fulfillment of its tasks, which is the provision of police services in various spheres of society[33].

We should note that in the fulfillment of their administrative service tasks, the newly formed police force should establish links with the Administrative Services Centers, in addition to delegate to the latter

[32] Жарая С. Б. Досвід надання адміністративних послуг у зарубіжних системах державного управління. *Науковий вісник Академії муніципального управління. Серія: Управління*. 2010. Вип. 1. С. 69.

[33] Про Національну поліцію : Закон України від 2 липня 2015 р. № 580-VIII URL : http://zakon5.rada.gov.ua/laws/show/580-19.

some powers that are within their competence. Using foreign experience, in particular regarding the list of administrative services provided by the universities of services, we support the proposals of experts of the Center for Political and Legal Reforms, who, having examined the bill No. 2567 "On Service Services and Service Centers of the Ministry of Internal Affairs of Ukraine"[34], consider that he contravenes the Law on Administrative Services and is subject to rejection. In addition, experts believe that most of the services provided by the Ministry of Internal Affairs of Ukraine are appropriate to transfer to local governments, as it is practiced in the leading European countries. In particular, when issuing a driver's license, you must refuse to take the exam again at the MIA's territorial service centers. That is, the exam must be passed once – in a driving school. The Ministry of Internal Affairs still has the responsibility for accrediting driving schools. Then it would be much easier to issue and exchange a certificate[35]. This authority should be delegated to local governments, which will have significant benefits. First of all, providing the service will be as convenient as possible for consumers. It will be available through the Administrative Services Centers. These centers are designed to make the process of obtaining administrative services as fast, comfortable and affordable as possible. The citizen should come to the center and provide the administrator with documents. In this case, by analogy with foreign experience, the following are: passport or document replacing it (for presentation only); Certificate of completion of the driver training facility; two color photo cards 3,5x4,5 cm in size; medical certificate of the established sample; receipt for payment of administrative service. The driver's license can be issued on the day of the application: the work hours of the centers are flexible, and the driver's licenses themselves in large centers can be produced on the spot.

Second, citizens will be able to leverage the quality of this service. Yes, everyone will be able to demand from the mayor and deputies

[34] Про сервісні послуги та сервісні центри Міністерства внутрішніх справ України : Проект Закону України від 2 квітня 2015 р. № 2567. URL : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54676.

[35] Реформа МВС: ще більше довідок, платних послуг і ніякої децентралізації. – 15.04.2015 // UAinfo. URL : http://uainfo.org/blognews/528527-reforma-mvs-sche-blshe-dovdok-platnih-poclug-nyakoyi-decentralzacyi.htm

transparent and comfortable conditions of its provision, while influence on the central level bodies is minimal[36].

In addition, there is no need to rush into the introduction of "chip" driver's license, because objectively Ukraine does not need it in the coming years. In this case, the certificate can be issued within one to two days, because it can be produced locally.

In the procedure of registration of vehicles it is necessary to refuse expert examination of vehicles and paid invoices. This administrative service would then be significantly faster and cheaper for citizens. You should also refuse a service such as "issuing a certificate of no (criminal record)". Here, the state should develop a different mechanism for providing relevant information at the request of the authorities, and not make money from such certificates[37].

But taking into account the designation of the structural units of the Ministry of Internal Affairs of Ukraine and the specifics of their functioning, it is clear that not all administrative services of the Ministry of Internal Affairs can and should not be delegated to local governments at all. In particular, these are the ones that relate to the permit system, because this area is most closely linked to the life and health of citizens. And this, as we know from the provisions of the Constitution of Ukraine, is of the greatest value to the state. However, it seems appropriate to separate administrative powers from other police functions, in particular by operating within the structure of the MIA of a special unit (following the example of Georgia), which should provide a full list of administrative services to citizens within their competence. The activities of such a unit should be based on the principle of "single window". For this purpose, the Ministry of Internal Affairs of Ukraine should develop quality standards in the provision of administrative services, which will include standards of professional action of the Ministry of Internal Affairs personnel in providing such services, as well as clear and understandable mechanisms for ensuring the quality of administrative services. In addition, the list of services and fees that may be provided by such units should be clearly defined.

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[36] Школьный Е. Зачем платить дважды? *Українська правда: Экономическая правда.* 02.07.2014. URL : http://www.epravda.com.ua/rus/columns/2014/07/2/472530.

[37] Тимощук В. Реформа МВС: ще більше довідок, платних послуг та ніякої децентралізації / В. Тимощук. URL: http://pravo.org.ua/administratywni-posluhy/1918-reforma-mvs-shche-bilshe-dovidok-platnykh-pocluh-i-niiakoi-detsentralizatsii.html.

Today some steps have already been taken to regulate the relations related to the provision of services and their provision to individuals and legal entities. In particular, the previously drafted bill No. 2567 "On Services and Service Centers of the Ministry of Internal Affairs of Ukraine"[38] was developed, in which the service providers define the MIA service centers. The purpose of such a center is to meet the needs of individuals and legal entities in obtaining services, the introduction of modern technologies, improving the service and promoting the development of the system of the Ministry of Internal Affairs of Ukraine.

However, in our opinion, in Art. 10 "Types of services and fees for their provision" of the above draft law does not contain a complete list of administrative services related to the permit system and which may be provided by the Ministry of Internal Affairs service center. Therefore, we consider it necessary to amend this article with the following types of administrative services:

1) issuing permits for the acquisition and transportation of firearms, ammunition, and other items covered by the permit system for individuals and legal entities;

2) issuing a permit for storage and carrying (registration, re-registration): prize weapons, hunting, cold, pneumatic weapons, other items covered by the permit system;

3) re-registration of the weapon at the place of its registration from one owner to another;

4) issuance of permission (registration of documents) for the opening and operation of objects of the permit system, working with explosive materials, pyrotechnic workshops and other objects defined by the legislation of Ukraine;

5) issuance of a license:

- manufacturing and repair of non-military firearms and ammunition, cold weapons, air guns of caliber more than 4,5 millimeters and bullet speed of more than 100 meters per second, trade in non-military firearms and ammunition, cold weapons caliber exceeding 4,5 millimeters and ball speed exceeding 100 meters per second;

[38] Про сервісні послуги та сервісні центри Міністерства внутрішніх справ України : Проект Закону України від 2 квітня 2015 р. № 2567. URL : http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54676.

- for the production of special means charged with tear and irritant substances, personal protection, active defense and their sale;

- provision of services for protection of property and citizens;

- to carry out activities related to the manufacturing and sale of pyrotechnics[39].

Therefore, these amendments will reflect at the legislative level the full range of administrative services, including in the field of police authorization, which will enable citizens to meet their needs by contacting the relevant MIA Service Center. By establishing such full-fledged and multifunctional centers, the Ministry of Internal Affairs will become closer to the task of transitioning from punitive to social-service content of police activity as a European-style body.

CONCLUSIONS

The current system of administrative service provision in most countries of the world has emerged from a long process of reform. The basis of such transformations was: 1) the formation of civil society on the basis of a market economy; 2) bringing the public authorities closer to the population by introducing changes in approaches to their functioning, namely the creation of a service department; 3) simplification of procedures for citizens to obtain appropriate services from public authorities; 4) widespread use of innovative technologies in the provision of administrative services; 5) implementation of quality criteria for compliance of services provided to the public by public authorities. In addition, today, the general tendency to provide administrative services to the public is to create service centers that act as "one-stop shops" of services. Such centers are usually set up by municipal authorities and address the pressing needs of the community concerned.

Regarding the foreign experience in providing administrative services by law enforcement agencies, the National Police of Ukraine should act as a public authority service whose task should be to provide high quality administrative services to citizens. Such services should be provided by specialized MIA service centers with a wide range of

[39] Про затвердження переліку платних послуг, які надаються підрозділами Міністерства внутрішніх справ, Національної поліції та Державної міграційної служби, і розміру плати за їх надання : Постанова Кабінету Міністрів України від 4 червня 2007 р. № 795. URL : http://zakon4.rada.gov.ua/laws/show/795-2007-%D0%BF.

administrative services. The service system itself needs further development on the basis of consumer (citizen) orientation, accessibility, confidentiality, simplification of procedures for obtaining such services, efficiency and effectiveness.

At the present stage of reforming the Ministry of Internal Affairs of Ukraine, one should take into account global trends in the organization and provision of services to the population, which is based on the creation of service centers, which act as "universities of services" with a "single window" system. Positive is the creation of service centers of the Ministry of Internal Affairs, which should become in the near future the focus of the whole range of administrative services, which were once provided by various structural units of law enforcement agencies, including units of the licensing system, and are now implemented by the National Police of Ukraine. In this regard, the list of administrative services of police authorities needs to be expanded and legislatively defined. In addition, the provision of such services by the National Police of Ukraine should be aimed at meeting the needs of the consumer as quickly and as qualitatively as possible, that is, first and foremost, the realization of constitutional rights and freedoms of man and citizen. Such an approach as a whole will be one of the steps towards the implementation of the human-centric concept in the process of constructing a qualitatively new social development of the Ukrainian state, where the person and his good, not the immediate good of the state, are the basis and guide for the functioning of the whole state mechanism.

SUMMARY

The author has studied peculiarities of scientific genesis of the concept and the essence of administrative services provided by the National Police of Ukraine. He has analyzed the experience of some countries in this field.

The directions of improvement of the legal basis for the provision of administrative services in the field of permitting system of the National Police of Ukraine have been offered. In particular, in the process of reforming the Ministry of Internal Affairs of Ukraine it is necessary to use and build on foreign experience. At the same time there is a need to adopt a legislative normative act, which should ensure legal

regulation of legal relations, in particular, in the sphere of arms trafficking.

In the author's opinion the list of administrative services of police authorities needs to be expanded and legislatively defined. In addition, the provision of such services by the National Police of Ukraine should be aimed at meeting the needs of the consumer as quickly and as qualitatively as possible.

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PSYCHOLOGICAL FACTORS OF PROFESSIONAL STRESS OF EMPLOYEES OF THE NATIONAL POLICE OF UKRAINE

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Stress is the flavor and taste of life, it can only be avoided by someone who does not do anything…
G. Selie

INTRODUCTION

According to Article 2 of the Law of Ukraine "On National Police", the National Police of Ukraine performs a number of tasks in providing police services in the following areas: 1) ensuring public safety and order; 2) protection of human rights and freedoms, as well as the interests of society and the state; 3) crime counteraction; 4) provision of assistance services to persons who, for personal, economic, social reasons or as a result of emergencies, need such assistance in the limits specified by law, which in turn determine the specific nature of their professional activities. Taking into account the importance of the tasks entrusted to the National Police, the probability of admittance to law enforcement activity psychologically unprepared police officers is greatly threatening as it leads to errors in professional activity, errors in risky and stressful situations.

The activities of the National Police staff of Ukraine are mostly carried out in extremely difficult conditions, namely: an unstable political and economic situation in the state, an aggressive environment of communication, stressfulness and riskiness, a constant shortage of time, a high level of personal responsibility for the results of their activity.

The realities of the present give us reasons to assert that the problem of experiencing stress is extremely relevant, and the ability to overcome it and cope with it is transformed into a frontal problem. Thus, the lack of psycho-emotional preparedness of the police officers leads to poor quality of performance of operative duties, traumas and injuries, and sometimes to death. All the above mentioned

circumstances determine the relevance and need for the study of determinants of stress in the professional activities of the staff of the National Police of Ukraine.

The thorough scientific and theoretical basis in the study of stress, its determinants, in particular among the police, the ways of its prevention are presented in the the scientific works of foreign and Ukrainian scientists – J. Bright, J. Greenberg, R. Lazarus, G. Selye, J. Aleksandrovsky, G. Balla, V. Bodrov, O. Bondarenko, N. Vodopianov, T. Zaichikov, G. Lozhkin, V. Klymenko, M. Korolchuk, V. Krainyuk, O. Laktionov, A. Maklakov, I. Malkina-Pykha, O. Malkhazov, S. Maksymenko, O. Markovets, O. Samoilov, O. Sannikov, N. Perogonchuk, V. Pankovets, Y. Pluzhnyk, N. Tarabrin, O. Timchenko, O. Rakovchen. Scientific researches of O. Hanushkin, M. Dyachenko, L. Nersesyan, V. Pushkin, O. Safin, M.Tomchuk are devoted to the problems of the systemic-structural approach to the study of psychological readiness for the activity. The generalized conclusions, positions of scientific works of such well-known scientists in the field of psychology as Yu. Alexandrovsky, H. Nikiforov, V. Maryshchuk, N. Tarabrin, N. Bacherykov, N. Vorontsov, P. Petryk, V. Molyako, O. Morozov, L. Kryzhanivska, V. Klymenko, M. Savchyn, S. Yakovenko were taken into account in the disclosure of the effects of stress factors, which in future can lead to maladaptive behavior and psychosomatic disorders and suicides.

The purpose of the article is to determine the psychological factors of the emergence of professional stress among employees of the National Police of Ukraine.

Tasks:

1. To characterize the essence of professional stress as a scientific category.
2. To analyze the peculiarities of the manifestation of professional stress among the employees of the National Police of Ukraine in stressful and risky situations during professional activity and its psychological consequences.
3. To analyze the specifics of the activities of the National Police staff and its tension.
4. To conduct an empirical study of psychological determinants of stress among employees of the National Police of Ukraine.

Methods of research

The methodological basis for the study are philosophical and ideological approaches in the context of psychological science (anthropological, humanistic, synergetic), general scientific methods (comprehensiveness, objectivity, complexity, specificity, etc.) and principles of psychology (determinism, unity of consciousness and activity, development, activity).

In addition, historical and comparative methods were used to trace the development process and the state of scientific development of stress issues. Systemic, structurally functional, civilizational, socio-cultural methods were used to identify the determinants of stress in the activities of the National Police staff in Ukraine as in a specific professional environment, endowed with the qualities of both open and closed functionally oriented system that is clearly hierarchical (structured) and at the same time corporate-integral (monolithic). The application of the logical-semantic and hermeneutic methods made it possible to clarify the content of the conceptual apparatus of the study in a sign socio-normative context. The sociological-genetic method served as an analysis of the stress factors in the daily activities of the staff of the National Police of Ukraine. Formally logical method contributed to the justification of the psychosomatic status of a policeman. Experimental-genetic method and active modeling method were used during the empirical study of the influence of stress factors on the professional activity of police officers, on the basis of which it was possible to recreate the special conditions of the occurrence and formation of the psychological functions of the modern Ukrainian policeman in the ontogenesis.

To identify stress factors in the professional activities of National Police officers, a number of proven research methods have been applied, namely the Holmes-Reich Scale of Stress Resilience and Social Adaptation, the Boston Stress Test and the Integrated Assessment of Stress (Y. Shcherbatykh), questionnaires: "The level of professional stress "(K. Vayman); "Inventory of symptoms of stress" (T. Ivanchenko); "Differentiated assessment of conditions of reduced working capacity" (G. Leonova, B. Velychkovskyi); methods of "Losses and Achievements of Personal Resources" (N. Vodopianova, M. Stein), "Coping Strategies in Stress Situations" (S. Norman, D. Andler,

D. James, M. Parker (adaptation of T. Kryukova), author's questionnaire – to study the needs of police for anti-stress programs.

150 students of the Faculty № 4 of Lviv State University of Internal Affairs participated in the experiment (42 students presented the Main Department of National police in Lviv region, 18 respondents presented Vinnytsya oblast, 14 – Volyn oblast, 10 – Transcarpathian region, 26 – Ivano-Frankivsk region, 17 – Chernivtsi region, 23 persons –Ternopil region). 120 persons were males, 30 were females.

Results and discussions

The concept of "stress" was first introduced in 1939 in the scientific terminology by G. Selye. He considered it as "... a non-specific response of the body to any demand that it poses."[1] Despite the long history of permanent attempts to study the phenomenon of "stress", there is still misunderstanding about its concept among scholars. The analysis of scientific inquiries gives grounds to state that the term "stress" is used in the following meanings: "mental stress", "nervous-psychic tension", "psycho-emotional intensity"[2]; "emotional stress"[3], "potential threat"[4]; the individual's reaction to the situation[5]; the quality of a situation that does not depend on the individual's attitude toward it[6]; a condition that creates an obstacle that is an internal reaction to stressors[7].

Among modern scholars, the notion of "stress" is defined as: an external stimulus or an event that causes personal pressure or irritation[8]; a subjective reaction that reproduces the internal psycho-emotional state of the tension, which is interpreted as emotions, defensive reactions and coping processes that an individual experiences[9]; physical reaction of an

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individual's body to a certain requirement or harmful influence[10]. Concerning the study of professional activity, B. Margolis, V. Croes and R. Cunn in their research "Labor stress: unregistered occupational danger" introduced the term "labor stress"[11].

The essence of the concept of "stress" has changed considerably since its appearance, which is directly related to the expansion of the scope of its use and more thorough research of various aspects of the problem. Currently, the determinants of the emergence of "stress" include heterogeneous factors. Most scholars tend to believe that the basic determinants of stress include subjective factors – the subjective evaluation of factors as stressful[12,13,14,15]; individual psychological features of the personality (internal factors)[16,17,18]; psycho-physiological determinants of "stress" (sensory deprivation, excessive loads, state of fatigue, monotony, disturbances of the rhythm of sleep and vivacity); psychosocial determinants of stress (information isolation, information shock, disturbance of communication, prolonged loneliness, group isolation, loss of workplace, professional burnout, family problems, household problems, affiliation to a particular national or sexual minority)[19,20].

A serious scientific and theoretical basis for the study of "professional stress" is the theory of "personal factor"[21]; "informational

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stress"[22] "variations of state activation (VSAT); "personal control"[23]; and "Functional Stress Model"[24], "A Model of Professional Stress"[25].

Nowadays, scientists pay special attention to the conditions of professional activity, as the influence of stress factors that arise in professional activities cannot be diminished. A number of scholars tend to believe that personality's stress that arises in the process of performing direct professional duties should be regarded as a characterological form of stress[26]. During the study of the negative influence of stress factors while performing professional functions and their negative consequences in scientific terminology the term "professional stress" was introduced[27].

Recently, scientific research has been intensified on the study of the influence of stress factors on the personality of the law enforcement officer in the process of fulfilling their tasks[28,29,30,31]. Professional activity of police officers is always accompanied by stress factors, high complexity and responsibility. Among the number of stress factors that adversely affect the psycho-emotional state of the police, scientists highlight the following: the seizure of hostages by terrorists; confrontation with an armed criminal; detaining a dangerous perpetrator; getting injured while performing professional duties; constant interaction

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with the criminal world; high level of responsibility for a decisions taken in conditions of information uncertainty; stressfulness and riskiness of performed functions; tension in communication in the field of professional activity; the use of measures of physical coercion, or firearms for killing, and so on. According to Professor V. Lieftierov, "... an employee who used weapons to defeat inevitably undergoes certain successive phases of the emotional consequences of a traumatic event. Each employee differently experiences posttraumatic phases and psychological reactions inherent to them, depending on the individual psychological characteristics, the level of adaptability and experience, the age of the worker, the target of shooting (the reputation of the suspect), the degree of risk and the danger of a shootout (how bloody it was), the legal and administrative consequences of what has happened. In addition, the awareness of the police officer of possible legal, social and psychological consequences after the use of firearms creates psychological "barriers" to ensuring the reliability of his actions in special conditions"[32].

Consequently, the study of the state of stress in professional activities suggests that phenomenologically, and in terms of the peculiarities of regulation mechanisms, the occupational stress of the National Police staff of Ukraine is a specific type of stress and can be defined as a multidimensional phenomenon of physiological and psychological reactions of the law enforcement officer to a difficult official situation.

The generalization of the provisions of the modern doctrine of psychological and professional stress determines the feasibility of analyzing the mechanisms of stress development among the employees of the National Police of Ukraine. Thus, at the level of macroanalysis of professional stress one can obtain a holistic description of the risk factors of operative and official activity in terms of causal relationships. An analysis at the level of intermediate stress mediation will allow taking into account the individual psychological features of the employee of the National Police of Ukraine and his personal experience in overcoming stressful situations. The level of microanalysis, reflecting

[32] Лєфтєров В.О. Теоретичний аналіз стресогенних чинників професійної діяльності працівників міліції. *Вісник Національної академії оборони.* № 4(17). 2010. С. 167–171.

the psychological mechanisms of adaptation of a specific worker of the National Police of Ukraine to stressful conditions, will allow predicting the effectiveness of the implementation of specific operational and official tasks.

The analysis of scientific developments in this area gives grounds to summarize that the model of professional stress of National Police staff of Ukraine can consist of three blocks: external stress factors; internal stress factors; physiological and psychological manifestations of professional stress.

The research of psychological factors of stress among employees of the National Police of Ukraine was conducted in two stages. At the first stage a theoretical and methodological analysis of the problem was conducted, and at the second stage an empirical study was carried out, which provided an opportunity to analyze the peculiarities of the course of professional stress among employees of the National Police of Ukraine and to identify the psychological determinants of its occurrence.

At the first stage of the study, an assessment of the level of professional stress among employees of the National Police of Ukraine was made. For the purpose of studying the emotional, behavioral and physiological state and the corresponding symptoms among the employees of the National Police of Ukraine, the methodology of "Comprehensive Assessment of Stress" (Y. Shcherbatykh) was used, which consists of 26 questions concerning individual work and life situations. After conducting a survey by Y. Shcherbatykh's method, almost half of respondents have shown: moderate stress (41%), expressed stress (23%), severe stress (2%), and stress is absent among 34% of respondents (see Diagram 1).

In order to determine the dominant parameters and characteristics of professional stress and the peculiarities of police officers' responding to it, a factor analysis was conducted. As a result of its fulfillment, three latent factors that have a significant impact on the personality of the policeman and his response to stress were established (see Diagram 2).

The psychological essence of the first factor is based on the fact that the following determinants influence the development of professional stress among employees of the National Police of Ukraine: personal adaptive index (0.93), neuropsychiatric stability (0.90), anxiety (0.78), communicative abilities (0,76), moral normativity (0,68).

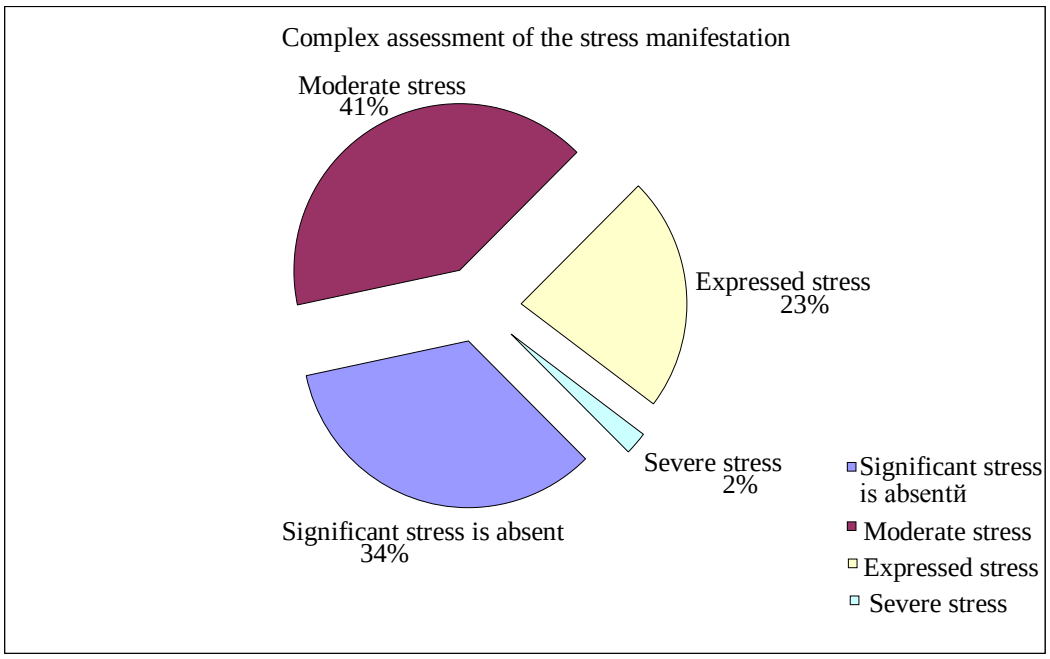

Diagram 1. Distribution of respondents according to the methodology of Y. Shcherbatykh

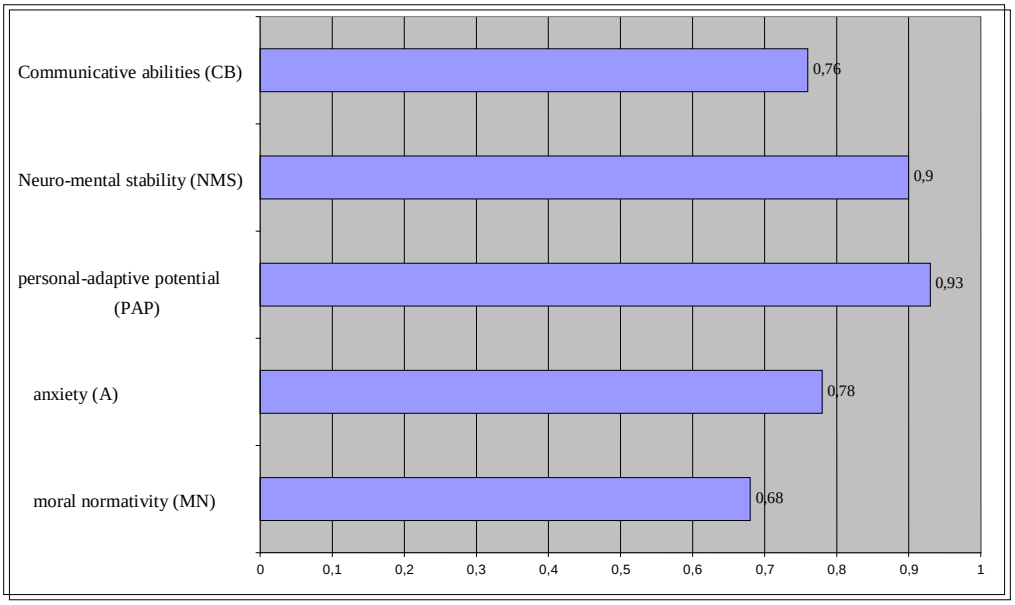

Diagram 2. Image of the first factor of "Distressing-adaptive individual differences in reacting"

The high level of "personal adaptive potential" indicator is the evidence that respondents have a high motivational orientation towards success in their professional activities, ability to adapt to changes in socio-political life, satisfaction with the chosen profession, etc. The high

level of neuro-mental stability indicator obtained in the process of research is the evidence that in the daily activities police officers are characterized by the sequence of actions and the purposefulness of behavior. The respondents' anxiety is reflected in the fact that their activities are accompanied with a high level of complexity of the assigned tasks and responsibility for the results. The ability of police officers to use three main functions of communication, namely: communicative, interactive, and perceptive, is shown by the indicator of "communicative abilities". The police self-assessment of their actions only in the legal field must coincide with their personal views of a moral character. Knowledge of the norms of the current legislation and its implementation into practical activities are extremely important for law-enforcers, as this is a prerequisite for the moral responsibility of the police officer's personality both to the society and to his own conscience. Only perceived legal rules by the police officers acquire the importance of personal values and the importance of moral standards.

The second factor, "Peculiarities of individual stress differences", obtained as a result of factor analysis, allowed to distinguish factors influencing the development of stress among employees of the National Police of Ukraine (see Diagram 3).

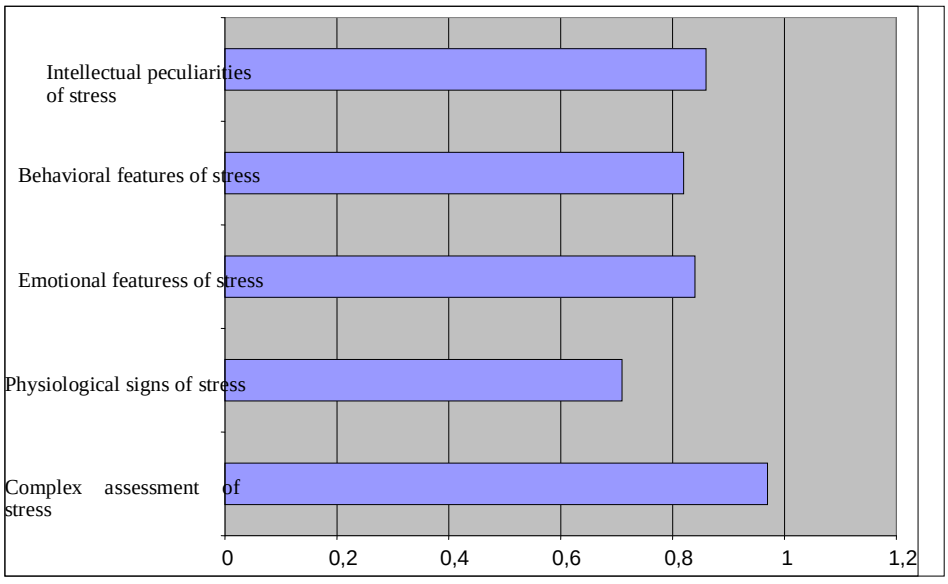

Diagram 3. Image of the second factor "Peculiarities of the individual differences in stress manifestation"

A significant indicator of physiological stress (0.71) is caused by the specifics of the work of the National Police staff of Ukraine, since their professional activity is always accompanied with physical overload of the body. Emotional stress (0.84) in the professional activities of the employees of the National Police of Ukraine occurs if there is a threat, in risky situations, in the period of long anticipation of possible complications of the operative circumstances. The activity of the police officers often occurs in conditions of information uncertainty, complex, fast variable and hardly predicted situations. The need to choose a coping strategy (conscious effort to solve problems and attempts to master, minimize or level them) in stressful situations leads to the occurrence of information stress (0.86). Constant manifestations of stress during work by police officers can cause both a mobilizing and disruptive effect, which leads to a general decrease in the adequacy of the functioning of the mental sphere, further to the emergence of behavioral features of stress (0.86).

The third factor, "Peculiarities of Personality's Productivity", consists of two diagnostic criteria (see Diagram 4).

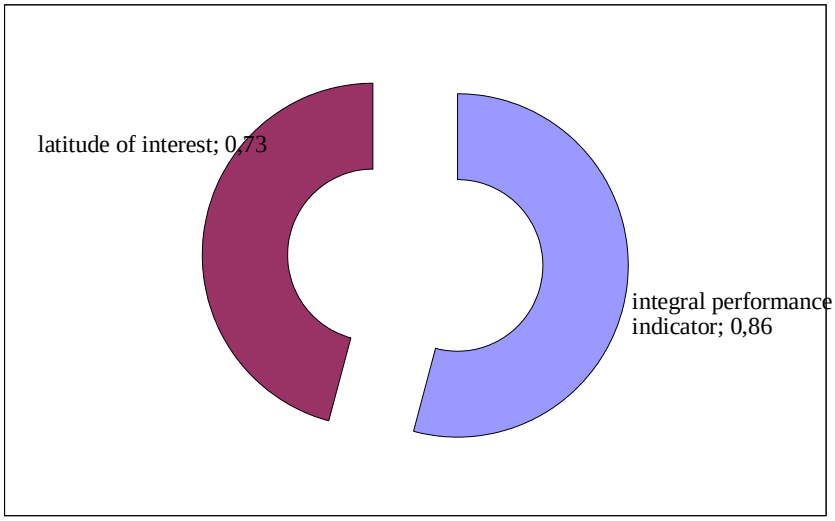

Diagram 4. Image of the third factor "Features of personality's performance"

The psychological essence of the "Latitude of Interest" factor (0.73) is based on the fact that the general intellectual development, the latitude of interests, and the desire of the employee of the National Police of

Ukraine to study throughout his life directly influence the dynamics of stress development.

Applying the methodology of expert assessments of the success of the professional activity of the police officer, it was established that the professional success of respondents is significantly influenced by: "Professionalism" – 5,7 ± 0,06 points; "Intelligence" – 4,9 ± 0,08 points; "Leadership" – 5,4 ± 0,07 points; "Self-control" – 5.4 ± 0.10 points. (see Table 1). All data are within the average values of a seven-point evaluation scale.

Table 1

Characteristics of factors that determine the success of professional activities of the National Police employees

Indicators	Professionalism	Intelligence	Leadership	Self-control
M	5,7	4,9	5,4	5,4
σ	0,6	0,9	0,7	1,0
m±	0,06	0,08	0,07	0,10

Application of "Self-Assessment of Stress Tolerance" method (S. Couchen, G. Williamson) makes it possible to state that the level of correlative relations, expressed by respondents both by separate connections and by the correlation coefficients, is 0.72.

The noteworthy stage of the research was aimed at elucidating the needs of the employees of the National Police of Ukraine for anti-stress programs. During the study, 75.9% of the respondents indicated that they did not have such programs in their units, which is evidence of insufficient attention to prevention and overcoming the phenomenon of occupational stress. Half of the respondents pointed to the urgent need for such anti-stress programs.

On the basis of the conducted research it can be stated that the prevention and overcoming of professional stress in the work of the police requires special psychological conditions, namely: 1) the mastery of knowledge about the nature and determinants of the emergence of professional stress; 2) mastering methods for identifying professional stress; 3) studying the mechanism of prevention and overcoming professional stress.

CONCLUSIONS

1. Professional stress among employees of the National Police of Ukraine is generated by factors that are most diverse in nature; one of the dominant among them is the specifics of the conditions of the police officer's work.

2. The professional activities of the staff of the National Police of Ukraine are conditioned by the following stress factors: the seizure of hostages by terrorists; confrontation with an armed criminal; detaining a dangerous perpetrator; getting injured while performing professional duties; constant interaction with the criminal world; high level of responsibility for a decisions taken in conditions of information uncertainty; stressfulness and riskiness of performed duties; tension in communication in the field of professional activity; the use of measures of physical coercion, or firearms for killing.

3. It is stated that psychological tension leads to the emergence of stressful situations. Three basic approaches to the analysis of professional stress have been substantiated: 1) since it is caused by the discrepancy (or incompatibility) with the requirements of the working conditions and the individual resources of the employee, it is important to identify the imbalance in the system of "personality – professional environment" and to find out how it should be optimized.; 2) since stress is generated by too high subjective assessment of the conflict situation, it is necessary to correctly identify a line of tolerant and balanced behavior to overcome the difficulties of communication; 3) since stress leads to a deregulation of the mechanisms of activity, therefore causes "re-evaluation" of personal abilities, the accumulation of chronic effects, which causes sustained pathological changes in the structure of the personality, so the question of introducing a set of training programs for the formation of skills and abilities to overcome stressful situations is worth urgent consideration. Ignoring such approaches to assessing the stress of workers can lead to their professional "burnout", and in the future – to the professional deformation of their personality.

4. Examination of the state of stress in professional activity suggests that phenomenologically and in terms of the peculiarities of regulation mechanisms, the professional stress of the employees of the National Police of Ukraine is a specific type of stress and can be defined as a multidimensional phenomenon of physiological and

psychological reactions of the law enforcement officer to a difficult official situation.

5. The model of professional stress among National Police staff of Ukraine consists of three blocks: external stress factors; internal stress factors; physiological and psychological manifestations of professional stress.

6. Long-term effects of stress factors have a profoundly deforming effect, requiring the employees of the National Police of Ukraine to maximize physical and psycho-emotional pressure, as well as high level of professional preparedness and a high level of development of the internal imperative.

7. The empirical study made it possible to outline the specifics of occupational stress among National Police staff of Ukraine and to identify the factors such as personal adaptive index, neuropsychiatric resistance, anxiety, communicative ability, moral normativity. Also, high levels of physiological and emotional stress are empirically proven, reflecting the specifics of the influence of the professional activity of the personality of the policeman on his emotional sphere.

8. The main special psychological conditions for the training of National Police officers of Ukraine to prevent and overcome professional stress include: 1) mastering knowledge about the nature and determinants of professional stress; 2) mastering methods for identifying professional stress; 3) studying the mechanism of prevention and overcoming professional stress.

9. The complex problem of prevention and overcoming the phenomenon of professional stress by the employees of the National Police of Ukraine provides for the constant provision of psychological support through the use of interactive techniques (anti-stress programs).

SUMMARY

The article deals with theoretical and methodological analysis of stress factors that influence the employees of the National Police of Ukraine during their professional tasks execution, discusses the methodological substantiation of the experimental study of stress resistance, and reveals the main directions of the research. The determinants of stress resistance, structural components of the individual and the influence of individual and psychological properties of the individual as a subject of the activity on the ways of

constructing behavioral strategies for stress management in risky and stressful conditions of the activity are considered. The understanding of the relations between stress resistance and the individual and psychological characteristics is analyzed. It is argued that the activities of the National Police staff of Ukraine are carried out in extremely difficult conditions, namely: an unstable political and economic situation in the state, an aggressive environment of communication, extreme and risk-taking, constant shortage of time, a high level of responsibility for the results of the activities. It is revealed that the problem of stress experience is extremely relevant, and the ability to overcome it and cope with it is transformed into a frontal problem. It is noted that the lack of psycho-emotional preparedness of the policemen leads to the poor quality of operational tasks performance, wounds, and sometimes deaths. Among a number of stress factors that negatively affect the psycho-emotional state of the police officers, the following ones are singled out: seizure of hostages by terrorists; confrontation with an armed criminal; apprehending a dangerous perpetrator; getting mutilation or injury while performing professional duties; constant interaction with criminality; a high level of responsibility for the decisions taken in conditions of information uncertainty; stressfulness and riskiness of performed duties; tension in communication in the field of professional activity; the use of measures of physical coercion or weapon for defeat. The model of professional stress of employees of the National Police of Ukraine, which consists of three blocks: external stress factors; internal stress factors, physiological and psychological manifestations of professional stress is presented. The level of professional stress among law-enforcement officers is analyzed, and three latent factors, which have a significant influence on the personality of the policeman and his reaction to stress, are distinguished. The need for anti-stress programs for the employees of the National Police of Ukraine is highlighted. It is revealed that the complex problem of prevention and overcoming of the phenomenon of professional stress of the employees of the National Police of Ukraine anticipates a usual provision of psychological support realization with the use of interactive techniques.

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PECULIARITIES OF CRIMINOLOGICAL CHARACTERISTICS OF CRIMINALS IN THE BORDER BLACK SEA REGIONS OF MAINLAND UKRAINE

Konopelskyi V. Ya.

INTRODUCTION

Today Ukrainian society is undergoing fundamental reforms aimed at European integration and decentralization. Brand-new standards of law enforcement activity are being introduced. Thus, crime combating is being transferred to the regional level. In this context, 21st century brought new geopolitical and criminological challenges, such as: infringement of the territorial integrity of the country; offence against the inviolability of its state borders; rise in the common crime rate, spread of terrorism, murders, smuggling, arms trafficking, drugs, human trafficking, etc. The quantitative and qualitative indicators of the state of regional crime, in particular in the border regions of Ukraine, have changed drastically. Today's criminals cover more than just one particular area or the territory of the district, city, region, and even the country. Today`s regional crime in the border regions has become more mobile and flexible, and the criminals become more skilled and active in introducing new forms, types and methods of criminal activity. Thanks to the information available, criminality becomes more hardcore. This being so, the geopolitical challenges, as well as the poor regional and national system and the strategy for crime prevention, turn the southern border regions of Ukraine into a zone suitable for the unlawful activity of underworld figures.

Thus, according to the official statistics of the Ministry of Internal Affairs and the General Prosecutor's Office of Ukraine, there is a significant degradation of the quantitative and qualitative indicators of crime in the border Black Sea regions. For instance, for the period from 2012 to 2017, the average crime rate in Ukraine increased by +4% (from 504.027 to 523.911), in Odesa region it increased by +33% (from 24 474 to 32576), in Mykolaiv region it increased by +63% (from 10 310 to 16798) and in Kherson region it increased by +46% (from 11 452 to 16760). The intensity of crime per 100 thousand people also shows

downward dynamics. In 2017, it is one third higher if compared with 2012: in Mykolaiv region from 879 to 1460 (+66%); in Odesa region from 1027 to 1365 (+33%); in Kherson region from 1063 to 1587 (+49%), which far outweighs the average Ukrainian indicators showing the crime intensity raised from 1110 to 1230 (+11%).

It is necessary to note the gravity of crimes in the southern border regions of Ukraine. For instance, just in 2017, Odessa region had 54% (17697) of serious and particularly serious crimes committed, in Mykolaiv region it was 41% (6859), in Kherson region it was 41% (6922), while the Ukraine-wide indicators were 40% (214660) of all crimes. As it is, Ukrainian regions, in particular, border ones, faced troubled social and criminological realities, which, in their turn, require brand-new crime analysis and counteraction approaches. Thus, the phenomenon of crime should be understood as a regional and cross-border issue. It is crucial to find out new ways of improvement of the effectiveness of law enforcement bodies in the border Black Sea regions of mainland Ukraine.

1. Criminological Characteristics of the Criminal

Crime is one of the extreme forms of evil. There is always a specific individual, a member of society standing for the crime. Such an individual is a kind of reflection of the defects and flaws of society. That is why the issue of personality of the criminal is one of the leading and most difficult issues in criminal science. Scientists hold violent discussions of the personality of the criminal since it is the key and most important link in the entire mechanism of criminal behavior. The peculiarities of the personality of the criminal, which causes such behavior, should be the object the preventive measures are focused on.

According to V.I. Shakun, the introduction into the scientific terminology of the criminological category of a ‘personality of the criminal’, its theoretical study, understanding, and practical application are crucial for preventive measures. First and foremost, this category emphasizes the fact that the criminal is still an individual, even if antisocial one. Thus, the relevant law-enforcement bodies, investigative bodies, and the penitentiary administration should have an appropriate level of attitude, free from dishonor. Consequently, the study of the personality of the criminal should not be limited to criminal and juridic

characteristics. The data on social and demographic status are very important.[1]

According to the results of A.A. Kovalkin's research, the summarized criminological characteristic of certain types and categories of criminals makes it possible to distinguish their specific crime-causing features and traits, determine criminogenic population groups, predict criminal behavior of some individuals, and work out appropriate preventive measures to be applied to them.[2] In turn, one of the crucial aspects of the study of personality of the criminal is the study of criminologically important peculiarities that are present in all criminals. According to O.H. Kulik, this study is necessary to identify the main principles of determination of crime and work out preventive measures to be applied.[3] Modern criminological approaches[4], tend to understand the criminal as a person with socially significant characteristics, signs, connections and relationships peculiar to the criminal, being combined with other (non-personal) conditions and circumstances that cause criminal behavior.

Today the advanced knowledge of the criminological peculiarities of quantitative and qualitative changes, social and psychological changes, as well as the level of criminal manifestations in the specific territory makes it possible to get a better theoretical understanding of the nature of anti-social behavior. In terms of practice, law enforcement bodies have the opportunity to get a broader picture of the geography of criminals, their quantitative and qualitative characteristics and work out the crime prevention measures that would respond to the criminal activity of the population on a specific territory. For instance, there is always a specific person standing for each crime and a certain number of persons standing for the number of crimes.

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[1] Шакун В. І. Урбанізація і злочинність : монографія. Київ: УАВС, 1996. 256 с.

[2] Ковалкин А. А. Личность преступника и некоторые способы её криминологического анализа. *Проблемы изучения личности правонарушителя: сб. научн. тр.* Москва: Изд-во ВНИИ МВД СССР, 1984. 158 с.

[3] Кулик О. Г. Кримінологічна характеристика осіб, які вчинили злочини в Україні: сучасні тенденції. *Юрид. Україна. Сер.: Кримінально-правові науки.* 2013. № 7. С. 98–102.

[4] Чекмарьова І. М. Особливості кримінологічних ознак особи злочинця для запобігання злочинності. *Development of Legal Regulation in East Europe: Experience of Poland and Ukraine* (Sandomierz, Poland, 27–28.01.2017). Sandomierz, Poland, 2017. С. 178–181.

Modern criminological studies name from 4 to 7 main peculiarities and from 30 to 40 constituent elements of these peculiarities, which form the theoretical fundamental of the criminological characteristics of the personality of the criminal.[5] They include social and demographic (gender, age, education, marital status, occupation, place of residence, etc.); social and role (immediate environment, everyday relations, family relations, etc.); criminal (data on the type of crime, criminal behavior drive, individual or group nature, the type of backslide, etc.); moral and psychological (mindset, spiritual dimension, views, setting, beliefs, values-based orientations, etc.), etc.[6] Depending on the purpose, objectives and level of the study, not all of the given elements, compounds and traits of the criminal are comprehensively analyzed within the thematic criminological study. Due to the complexity of the issues of the study of regional crime, even doctoral dissertations highlight the results of the analysis of dynamics, structural distribution and peculiarities of the territorial spread of criminals. Typically, criminological data characterizing the personality of the criminal are presented by the results of scientific studies specifying the results that describe the peculiarities of the structure of the identified criminals. Scientists also analyze the distribution of crimes in terms of geographic spread and dynamics, study the main social and demographic, criminal and criminological peculiarities of the personality of the criminal.[7]

In a point of fact, it is quite hard to resolve the abovementioned issues within any regional criminological analysis since we are talking about the characteristic within a great number of heterogeneous territorial and spatial as well as social and demographic entities. The main issues faced by a scientist: first, it is difficult to obtain information from official sources; second, there is the lack of relevant information within the territory; third, there is the lack of schemes and methods for collecting and processing such information in the framework of comparative analysis; fourth, the scope of scientific study is limited.

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[5] Кримінологія: Загальна частина : альбом схем / авт.-упоряд.: Денисов С. Ф., Денисова Т. А., Кулик С. Г., Шеремет О. С.. Чернігів: Десна, 2015. 658 с.

[6] Джужа О. М, Кондратьєв Я. Ю., Кулик О. Г. та ін. Кримінологія : підручник. Київ: Юрінком Інтер, 2002. 416 с.

[7] Кулик О. Г., Наумова І. В., Бова А. А. Злочинність в Україні: фактори, тенденції, протидія (2002–2014рр.) : монографія. Київ: ДНДІ МВС України, 2015. 364 с.

Within our study, the criminological characteristic of personality of the offender is an analysis of the system of traits altogether giving an idea of the territorial distribution of criminals; data on the levels of criminal activity on the specific territories; dynamic changes and trends of such activity in the regions being studied; social and legal, criminological and other peculiarities of population groups engaged in a crime in a specific region, which are important sources to organize crime prevention the southern border regions of Ukraine.

According to official statistics, eastern regions of Ukraine tend to have the greatest number of crimes and criminals in recent years. Thus, in 2015, out of 565.182 crimes recorded and 18.809 suspects, 50.146 crimes were recorded in Dnipropetrovsk region, where only 17.669 (35%) persons were served a notification of suspicion; 41.804 crimes were recorded in Zaporizhzhia region, and 139.72 (33%) persons were served a notification of suspicion; in Kharkiv region 40.949 crimes were recorded, while 127.81 (31%) persons were served a notification of suspicion. Thus, of all crimes committed in the country, almost a quarter (24%) is recorded in 3 eastern regions of Ukraine.[8,9]

As for the southern border regions of Ukraine, practically every tenth crime is committed in Odesa, Mykolaiv or Kherson region. In recent years, these regions tend to have a significant rise in crime rate and a decreased level of crimes disclosure. For instance, in 2015, in Odesa region there were 29364 crimes recorded and only 9212 (31%) persons were served a notification of suspicion; in Kherson region there were 16071 crimes recorded and 8036 (50%) persons were served a notification of suspicion; in Mykolaiv region there were 19454 crimes recorded and only 7197 (36%) persons were served a notification of suspicion. By contrast, in the western regions of Ukraine, the crime rate is 2-3 times lower than in the southern regions. For instance, in the same year, in Transcarpathian region there were 11378 crimes recorded and 4718 (41%) persons were served a notification of suspicion; in Ivano-Frankivsk region there were 8512 crimes recorded and 2929 (34%) persons were served a notification of suspicion. It is necessary to note that in some regions the crime rate increased against the background of a

[8] Статистичний щорічник України за 2013 рік / Держ. служба статистики України; за ред. Осауленка О. Г.. Київ: Держаналітінформ, 2014. 534 с.

[9] Чекмарьова І. М. Запобігання злочинності у прикордонних регіонах Півдня України : дис. … канд. юрид. наук: 12.00.08. Одеса, 2017. 307 с.

decreased number of suspects. Not to mention that there is a drop in the level of crimes disclosure in all regions of the country. For the past three years, the level of crime disclosure has dropped from 71% to 33.2%, and in some regions from 86% to 30%. Six or seven years ago, out of ten crimes committed, every seventh or eighth person was prosecuted. In recent years, out of ten crimes recorded, only 3 or sometimes 5 persons are prosecuted. It is necessary to note that during 2008-2010 the percentage of crime disclosure in the country varied from 70 to 78 percent. According to the statistics of the Ministry of Internal Affairs of Ukraine, the picture was as follows: in 2008, in Odessa region, out of 19777 crimes recorded, 77.2% (16321 crimes) were disclosed; in Mykolaiv region out of 11008 crimes recorded, 81.5% (9615) of persons were revealed; in Kherson region, out of the 9838 crimes recorded, 76.5% (833 people) were disclosed. These levels remained unchanged back to 2012[10,11,12], after which the level of disclosure and the number of suspicions rapidly dropped.

The rate of criminal activity of certain population groups is an important indicator of the crime rate of the regions. If talking about this indicator, in recent years the highest crime rate with a coefficient of 934 per 100 thousand people aged 14 to 70 years is observed the territory of Kherson region. Mykolaiv region took second place with 739 per 100 thousand people aged 14 to 70. Odessa region has the lowest crime rate with an indicator of 460 criminals per 100 thousand people aged 14 to 70. Since Ukraine-wide indicators are 488 per 100 thousand people aged 14 to 70, the criminal activity of the population of Odessa region is almost equal to the national level of crime rate, while the crime rate of Kherson and Mykolaiv regions two times higher than the Ukraine-wide indicators. Based on the results of the criminological study and statistical data, we have found out that the overwhelming majority of crimes are committed by men – 87.1% and

[10] Стан та структура злочинності в Україні (2009–2010 рр.). URL: http://mvs.gov.ua/mvs/control/main /uk/publish/article/374130 (дата звер- нення: 10.02.2018).

[11] Стан та структура злочинності в Україні (2010–2011 рр.). URL: http://mvs.gov.ua/mvs/control/main/ uk/publish/article/717134 (дата звер- нення: 10.02.2018).

[12] Стан та структура злочинності в Україні (2007–2008 рр.). URL: http://mvs.gov.ua/mvs/control/main/uk/publish/article/170319 (дата звернен ня: 10.02.2018).

12.9% of crimes are committed by women.[13,14] This data are peculiar to the border Black Sea regions of Ukraine, as confirmed by the results of polling of law enforcement officers and relevant statistical data.

The distribution of criminal activity among different age groups is another distinguishing feature of a regional offender. According to the criminological studies[15,16], the most numerous group consists of persons aged 18 to 28 years. Their share is on average about 35% of the total number of detected persons suspected of committing crimes. The offenders aged 29-39 years, which is about 33% of all detected criminals, hold the second place in terms of numerical strength. The percentage of persons aged 40-59 years was 24%[17]. The share of juvenile offenders in Ukraine is about 5%, while these indicators were distributed by regions as follows: Odesa region – 5.62%; Mykolaiv region – 4.5% and Kherson region – 2%. A group of 60-year old and above is inconsiderable in number – about 2.8-3 percent. In general, according to criminal statistics, in Ukraine and studied regions, the highest criminal activity is attributed to the categories of persons aged from 18 to 40 years. Based on our estimations, the aggregate share in the overall structure of criminals is about 70%, namely, persons aged 18 to 28 years commit 33% of crimes, 29 to 40 years – 36%.

The boundary regions of the Black Sea region of Ukraine are characterized by negative dynamics of increasing criminal activity among population and pronounced regional peculiarities. While from 2008 to 2016, a decrease was observed in officially registered criminal activity in Ukraine by -9%, this rate in Odessa region was -18%. On the contrary, Kherson and Mykolaiv regions show a tendency towards increase in the criminal activity among population. Mykolaiv region shows an increase of +8%, and Kherson – +32%. In our opinion, the above data is mainly due to the results of the law enforcement agencies work. They do not fully reflect the real state of affairs, because they do

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[13] Кулик О. Г. Кримінологічна характеристика осіб, які вчинили злочини в Україні: сучасні тенденції. *Юрид. Україна. Сер.: Кримінально-правові науки.* 2013. № 7. С. 98–102.

[14,16]Фролова О. Г. Злочинність і система кримінальних покарань (соціальні, правові та кримінологічні проблеми й шляхи їх вирішення за допомогою логіко‑математичних методів) : навч. посіб. Київ: АртЕк, 1997. 208 с.

[15,17] Кулик О. Г., Наумова І. В., Бова А. А. Злочинність в Україні: фактори, тенденції, протидія (2002–2014рр.) : монографія. Київ: ДНДІ МВС України, 2015. 364 с.

not take into account the high level of latency of crime and those who actually commit a crime.

Based on the analysis of the individual peculiarities of the criminals in Odesa, Mykolaiv and Kherson regions, such social group as "persons with no steady source of income" is of a special criminological interest. Representatives of this group commit crimes most often; as a rule, a high rate of relapse is recorded among them. This social group is quite numerous. Most of them are people with a very low standard of living and a distorted attitude towards traditional human values. The numerical strength of this group of population is quite significant. According to regional criminological studies[18], it is an average of 90 percent. For example, based on our estimations of official statistics with regard to the occupation of persons who committed crimes in 2016, the most criminogenic groups included the categories of "able-bodied persons, who neither work nor study" (79.8%) and "unemployed" (14.2%). The aggregate proportion of these categories in the overall structure of individuals in terms of occupation was 94%. Such group of persons as "students of the educational institutions", for various reasons, amounted to 5.64%, while the category of "civil servants" amounted to 0.18%, "local government officials" – 0.1%, and "elected officials" – only 0.04%. The specified indicators not only show the impoverishment and "marginalization" of entire population strata of the Ukrainian regions and, as a result, their criminalization, but also work priorities of the law enforcement agencies. Against the backdrop of high levels of corruption and shadow economy of Ukraine, the regional law-enforcement agencies detect no more than 1% of individuals potentially involved in this phenomenon.

Consequently, a cumulative analysis of crime determinants and study of criminals' identity provides grounds to assert that there is a substantial basis for further complicating of the criminal situation in the boundary regions of the Black Sea group. Due to the socio-demographic factors, the growth of crime in the studied regions is highly probable for account of the unemployed, refugees, internally displaced persons, and others alike. These can also include the foreigners from far and near abroad. Based on own research results, as well as statistical data

[18] Веприцький Р. С. Феноменологія злочинності в регіоні : монографія. Харків: Золота миля, 2014. 324 с.

analysis[19,20,21,22,23] of the Prosecutor's Office of Odesa, Mykolaiv and Kherson regions, it should be noted that the social exclusion of the individuals, who do not have a permanent source of income, every year, makes them committing most mercenary and selfish- violent crimes – more than 60%; crimes against human life and health – from 7 to 10%; crimes in the field of distribution of narcotic drugs, psychotropic substances, their analogues or precursors – from 5 to 7%. According to R. S. Veprytskyi, the above category of persons commit the highest number of crimes: persons, who neither work nor study – 67.5%; unemployed – 9.7%; freelancers – 8.0%; students – 2.6%; entrepreneurs (without formation of a legal entity) – 2.3%; other persons – 8.3%. Hence, it turns out that the proportion of criminals among those who do not have a permanent source of income is 10-15 times higher than those who work. The described data, based on the results of studying trial sentences, are confirmed by the example of Odesa, Mykolaiv and Kherson regions. Consequently, the social danger of the described category of persons is extremely high. They have the highest probability of committing crimes. This is primarily due to the lack in provisioning of basic needs for food, clothing, housing, and alike. The described results determine the priorities in the general social prevention of crime.

Local mass media and law enforcement agencies are expressing a legitimate concern about the criminal expansion across the territories of Odesa, Mykolaiv and Kherson regions. Due to specifics of geographic, climatic and socio-economic conditions of Odesa, Mykolaiv and Kherson regions, they attract domestic and foreign criminals-migrants. In recent years, the issue became topical of crimes committed by the foreigners from far and near abroad. The transitional points are

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[19] Єдиний звіт про кримінальні правопорушення за січень‑грудень 2016 року / Прокуратура Миколаївської області. 2017. URL: http://myk.gp.gov.ua/

[20] Єдиний звіт про кримінальні правопорушення за січень‑грудень 2015 року / Прокуратура Миколаївської області. 2016. URL: http://myk.gp.gov.ua/

[21] Єдиний звіт про кримінальні правопорушення за січень‑грудень 2016 року/ Прокуратура Херсонської області. 2017. URL: http://www.kherson.gp.gov.ua/ua/documents.html?dir_id=113257&libid=100142 (дата звернення: 10.02.2018).

[22] Єдиний звіт про кримінальні правопорушення за січень‑грудень 2015 року / Прокуратура Одеської області. 2016. URL: http://od.gp.gov.ua/ua/

[23] Єдиний звіт про кримінальні правопорушення за січень‑грудень 2016 року / Генеральна прокуратура України. 2017. URL: http://www.gp.gov.ua/ua/stst2011.html?dir_id=112661&libid=100820 (дата звернення: 10.02.2018).

organized in the boundary settlements; illegal migration is becoming widespread. Economic interests constitute the main reason for population migration to the studied regions: access to cheap raw materials; unrestricted access to sales of consumer goods (mainly from Turkey and China); unregulated land market due to privatization and bankruptcy of many enterprises of resort and production significance; the territories of the boundary regions of the Black Sea group turned out to be attractive for criminals involved in laundering of proceeds from crime.

As is well known, moral settings and the psychological atmosphere of the immediate social environment of a person is crucial for the development and consolidation of asocial, unlawful skills and behaviour stereotypes.[24] In this regard, during 2014-2015, an expert group of specialists from the Odesa State University of Internal Affairs conducted a comprehensive monitoring of the youth environment in the Odesa region. According to the results of an anonymous questionnaire, the expert group received data showing that only 52% of young people have a solid set about socially beneficial behaviour. While 46% of the respondents identified psychological readiness for committing crimes, 36% of respondents assumed the possibility of committing minor offenses; 6% – non-serious criminal offenses; 4% – serious criminal offenses. About 20% of respondents expressed readiness to commit grave and especially grave crimes against a person for material reward: to beat a person – 9%; deprive a stranger of life – 5%; deprive a friend or close person of life – 3%. Almost 20% of the respondents approved the anti-social behaviour of other persons.[25]

The leading idea of the consciousness of the young population in the studied region is the desire for enrichment. Thus, the specialists of the Odesa State University of Internal Affairs[26] recorded a high level of corruption in the consciousness of students (60% of respondents). Most of the respondents were participants or witnesses of various kinds of

[24] Абросімова Ю. А. Злочинність неповнолітніх та запобігання їй на регіональному рівні : дис. … канд. юрид. наук: 12.00.08. Львів, 2009. 261 с.

[25,26] Користін О. Є., Бабенко А. М. Моніторинг девіантної поведінки студентської молоді Одеського регіону та напрями її профілактики у ВНЗ. *Кримінально-правові та кримінологічні заходи протидії злочинності :* зб. матеріалів Всеукр. наук-практ. конф., м. Одеса, 13 листопада 2015 р. Одеса: ОДУВС, 2015. С. 81–83.

corruption, and a large number of them showed tolerance, and sometimes, sympathy for those who commit corrupt acts or receive large amounts of material wealth illegally.[27] The fact was potentially dangerous that a large number of juveniles and youth in the Odesa region sympathize with the presence and activities of extremist youth organizations that promote the cult of violence and cruelty. Almost one in five, or 18% of the respondents, directly stated that they are attracted to being a member of such an organization (12%), previously attracted (3%), will be attracted in the future (3%)[28]. The given results indicate the presence of negative processes in the formation of a specific psychological environment in the studied region. Such a situation adversely affects the regional criminal situation and constitutes grounds for exacerbating crime, including youth, in the event of symbiosis of criminogenic social, economic and political catalysts.

2. Criminal and Legal Characteristics of Personality of a Criminal

As part of our study, special attention is paid to the criminal-legal characteristics of the personality of criminals, namely: sustainability of unlawful behaviour, individual or group nature of the crime, etc. Data regarding the sustainability and intensity of illegal activity of individuals, individual or group nature of criminal behaviour, psycho-physiological condition provide a more complete idea of the territorial specificity of illegal activity, define the categories of persons who need increased preventive attention.

The social group of "persons who had committed crimes" is a dangerous social group in the criminological structure of the population of the Southern boundary regions. These are the individuals, who have already been subject to measures of legal influence for the commission of crimes. They constitute a significant proportion of those who commit crimes. Based on this the crime situation in the studied regions is defined as quite tense. The increase in the number of relapses indicates the

[27] Користін О. Є., Бабенко А. М. Моніторинг девіантної поведінки студентської молоді Одеського регіону та напрями її профілактики у ВНЗ. *Кримінально-правові та кримінологічні заходи протидії злочинності :* зб. матеріалів Всеукр. наук.-практ. конф., м. Одеса, 13 листопада 2015 р. Одеса: ОДУВС, 2015. С. 81–83.

[28] Ibidem.

sustainability of crime in the regions and ineffectiveness of work of the regional law enforcement agencies in preventing recidivism. Reduced number of "recidivists" in statistical reports means improving their professionalism, high latency of crime and increased degree of organization. Consequently, we considered the data concerning persons who previously committed criminal offenses, as a very important carrier of criminological information. According to experts, the very existence of preliminary conviction or the experience of another illegal activity is a real indicator of the duration of criminal activity and resilience of anti-social orientation of individuals. In terms of regions, such information serves to prioritize the planning and organization of crime prevention activities.[29]

In this regard, in terms of the regional structure of a significant share of persons, who were notified of suspicion, and who had previously committed criminal offenses, we recorded: in Kherson region – 3708 (or 46%); second place according to the criminal activity of those who had previously committed criminal offense – Mykolaiv region – 2900 (40%). In Odesa region, the factor of preliminary criminal activity was recorded at the level of 1877 (20.37%) persons. Thus, based on the duration of criminal activity and resilience of anti-social orientation of individuals, Kherson and Mykolaiv regions are twice more dangerous than Odesa region, which has the same number of penitentiary institutions in the form of imprisonment as the neighbouring territories: Odesa region – 6, in Mykolaiv – 7 and Kherson – 6.[30] Such a distribution shows not so much the increased determination of regional recidivism by social and economic factors, but the shortcomings in the regional organization for combating recidivism.

Based on findings of the criminologists, drug and alcohol abuse adversely effects the psychological and social spheres of life and activity of a person. Narcotic or alcohol dependence is a stimulant not only for negative behaviour in general, but also for the commission of various crimes. Based on results of studying statistical data and sentences in criminal proceedings, we found that a sign of intoxication has a pronounced regional specificity among persons committing crimes.

[29] Бабенко А. М. Запобігання злочинності в регіонах України: концептуально-методологічний та праксеологічний вимір : монографія. Одеса: ОДУВС, 2014. 416 с.

[30] Ibidem.

Thus, as of 2016, in Odesa region more than 7% (656) of persons committed crimes in a state of alcohol or drug intoxication; Mykolaiv and Kherson regions – 9.55 (688) and 9.1 (731) percent, respectively. The crimes committed in a state of intoxication are characterized by absurdity, excessive and unjustified cruelty, and are often committed using firearms or knives. The vivid examples of such a situation are cases brought to the court and confirmed by the relevant court sentences. For example, the verdict of the Beryslav District Court of Kherson region dated 16.06.2015, case No. 658/278/15-к, criminal proceedings No. 1-кп/647/59/2015, determined guilty the citizen P. – temporary unemployed, previously unconvicted, with no criminal record, pursuant to article 89 of the Criminal Code of Ukraine, in committing crimes under Part 1 Article 263, Part 2 Article 15, Clause 1, Part 2 Article 115, Part 1 Article 115 of the Criminal Code of Ukraine, with a final sentence of imprisonment for twelve years. On September 24, 2014, at about 11:40 am, the specified citizen, being in a state of intoxication, near the entrance No. 2 of the building number 116 at Karl Libknekht street in the city of Kakhovka, Kherson region, pursuing a direct intent, aimed at unlawful deprivation of life of two persons M. and V., in the course of a conflict that arose suddenly on the ground of personal hostile relations, using a firearm – revolver, made one shot into the vital human organ – head of M., which caused the latter severe bodily injuries, dangerous to life, and resulted in his death. Continuing the implementation of criminal intent aimed at murder of two persons the citizen P. made one shot from the specified revolver within area of the body of V., which caused the latter light bodily injuries, resulted in a short-term health disorder.[31]

A vivid example of neglecting human life and using of insignificant reason for murder is the verdict of the Prymorsk District Court of Odesa dated April 17, 2015, case No. 522/20315/14-к, proceedings No. 1-кп/ 522/1044/14, which convicted temporarily unemployed citizen Z. under Part 1 Article 115 of the Criminal Code of Ukraine to 9 (nine) years in prison for the crime committed on August 02, 2014, at about 1:00 am, when the specified citizen, being in a state of intoxication, moving down Didrikhson street towards Staroportofrankivska street in Odesa, passing near the building number 7 at Didrikhson street, which was poorly

[31] Єдин. держ. реєстр суд. рішень України. URL: http://www.reyestr.court.gov.ua/ Page/7 (дата звернення: 10.02.2018).

lighted, collided his left shoulder with citizen K, who was moving towards him. In connection with this, a verbal quarrel arose, which converted into a brawl, as a result of which citizen K. tried to strike with his right hand the citizen Z in the area of the head, but the latter, having the skills in hand-to-hand combat, intercepted the hand and began to hold, while taking out of the pocket of jeans with his right hand the balisong "knife-butterfly", using which, by striking a neck, committed a deliberate murder of the citizen K.[32]

Another example is set forth in the verdict of the Kotovsk City Court of Odesa region dated April 16, 2015, case No. 503/527/15-к, proceedings No. 1-кп-505/195/15, which determined guilty the unemployed citizen O. in the commission of a criminal offense provided for in Part 1 Article 115 of the Criminal Code of Ukraine and punished him in the form of 8 (eight) years of imprisonment. On January 14, 2015, at about 11:30 pm, the said person, being in a state of intoxication, while in the premises of the summer kitchen, on the grounds of suddenly arising personal hostile relations that arose as a result of a verbal conflict, anticipating and wishing for death of the victim, inflicted about three strokes with axe head on the head, causing severe bodily injuries, from which the latter died on the spot.[33] Thus, the analysis results of statistics and convictions in criminal proceedings indicate that individuals intoxicated, for insignificant reasons and with undue cruelty; as well as using the cold and firearms are committing the majority of crimes. Specialists also argue that in fact, the widespread crime of this category is complicity prevalent.

With regard to the latter characteristic, the criminology proved that group members under the influence of the group have a setting and value orientations formed, which include the setting and methods of addressing vital problems. The group's impact on the individual is very significant: its members communicate on a daily basis, relations between them are based mainly on feelings, and their relationship to each other and assessment of various social facts, events and other people inevitably manifested in an emotional form. The mood and views that prevail in the group are passed on to its associates. Therefore, the

[32] Єдин. держ. реєстр суд. рішень України. URL: http://www.reyestr.court.gov.ua/Page/7 (дата звернення: 10.02.2018).

[33] Ibidem.

intensity and duration of the negative impact on the individual from the party of the microenvironment, which covers not only the mind and will of the individual, but also his feelings and emotions, are understandable. Regarding this characteristic, in terms of regions, the greatest number of crimes committed by a group of people is committed in Mykolaiv – 696 (9.7%), in the second place Odesa region – 673 (7.3%) and Kherson region – 458 (5.7%).

Numerous examples of forensic investigations indicate the high social danger and increase of crimes committed by a group of people in the studied regions. Thus, the verdict of the Komsomolskyi District Court in Kherson dated 20.08.2015, criminal proceedings No. 667/4011/15-к, determined guilty the unemployed citizens L. and S. in the commission of a crime, stipulated in clause 12 Part 2 Article 115 of the Criminal Code of Ukraine, and sentenced each of them to 11 years' imprisonment. The indicated citizens, on April 05, 2015, at about 11:00 am, while in the apartment of citizen O., acting on the basis of a preliminary conspiracy, during a sudden conflict for domestic reason related to the personal hostile relations, deliberately, having a direct intent of causing death to another person, stricken with the kitchen knives numerous chaotic blows to vital organs in the regions of body, chest, abdomen, neck of the victim, from which the latter died.[34]

According to research results, we did not find a significant statistical dependence on the impact of national attributes in persons who committed crimes on the territory of the studied regions. Ukrainians committed the vast majority of crimes in Odesa, Mykolaiv and Kherson regions – from 97.7% to 99.57% of crimes, while foreigners committed from 0.43 crimes in Kherson, and 2.3% in Odesa region.

For the proper organization of crime prevention, objective distribution of forces and means of preventing crime, information about the most common places in which persons commit crimes is of a great importance. Objective information on this subject was grouped in the data below based on the analysis of statistics on crime and individuals committed crime in the three regions of the Ukrainian Black Sea region. According to the data received, analysis results of the criminal and legal statistics and expert surveys of specialists who are directly involved in

[34] Єдин. держ. реєстр суд. рішень України. URL: http://www.reyestr.court.gov.ua/Page/7 (дата звернення: 10.02.2018).

crime prevention in the boarding areas of the Black Sea region of Ukraine, it is established that the overwhelming majority of people commit crimes in the cities and settlements of urban type. In Odesa region, such crimes are committed by 70.5% of the identified individuals among those who have been notified of suspicion. Kherson and Mykolaiv regions, these indicators were at almost 68%. At the same time, such regional centres as Odessa and Mykolaiv are more attractive in terms of committing crimes. Almost 40% of detainees committed crimes here, while in the countryside, the criminals committed about 30 % of offenses. In Kherson region, in terms of the crime site, the accused from villages and regional centres were distributed equally – 30% each group. At the same time, public places turned out to be the most attractive in terms of committing crimes in Odesa and Mykolaiv regions, where offenders commit crimes at a level 14-19%. Kherson region – only 7.2% of criminals commit crimes in public places.

The experience of practical activities supported by interviewing law enforcement officers and research results of criminal proceedings[35] provide grounds for arguing that in the Black Sea border, depending on the crimes committed, there are certain social and criminological features of the identity of the perpetrators. On the example of the bordering regions, we have established consistent patterns of criminals on a social map of society with various strata. The regional crimes of different types have inherent own social portrait, as evidenced by the criminology and its methodology.

Thus, according to our data, which correlate with the criminological research, we have obtained results that represent the middle class and higher social strata among killers and rapists in a smaller number than the “lower” segments of the population. The vast majority of crimes in the southern regions of the border area are committed in the so-called “underworld".[36] Violent crime, as a rule, associates with the alcohol and drug abuse, low culture, everyday conflicts, preliminary conviction, lack of permanent sources of earnings.

With regard to mercenary or economic crime, the analysis of criminal proceedings indicates a completely different social composition

[35] Єдин. держ. реєстр суд. рішень України. URL: http://www.reyestr.court.gov.ua/Page/7 (дата звернення: 10.02.2018).

[36] Ibidem.

of criminals. This factor is most clearly manifested through the prism of the subject of the crime and extent of the harm caused. For example, we recorded the representatives of the "social underworld", as a rule, during the commission of crimes provided for in parts 1, 2 or 3 of Articles 185-190 of the Criminal Code of Ukraine with an insignificant extent of harm caused, while theft, smuggling in large and especially large amounts, vehicle theft – are most common among more "privileged" parts of society.

The pronounced differences in the socio-economic characteristics of criminals are also observed when comparing the qualified and most severe types of official crimes. We associate these regional peculiarities of the distribution among criminals with the peculiarities of the life of separate groups formed in accordance with the social product distribution rules between various strata in the bordering areas of the Black Sea region of Ukraine, availability of certain benefits, existence of social ties, barriers to obtaining material goods and differences in the level of living between different regions of the border group.

CONCLUSIONS

To summarize, it can be noted that the analysis of the main characteristics of the criminal identity gives grounds to assert that in the boundary region of the South of Ukraine the absolute majority of crimes are committed by unemployed young men aged 18-40 years, most of whom being unmarried at the time of committing crime, but were formerly married. Most of individuals, who committed crime, had secondary education, were unemployed and studied nowhere at the time of committing crime; they are characterized by low culture and intellectual development. Almost half of the perpetrators were previously convicted of a crime (in half of the criminal cases related to violence), which is characterized by an early recurrence. The above characteristics should be taken into account in crime prevention process at the regional level, as well as during detection and investigation of criminal proceedings, programs development and planning crime prevention measures in the boundary regions of the South of Ukraine.

SUMMARY

This paper deals with the criminological characteristics of persons who committed crimes in the boundary regions of the South of Ukraine.

It was established that Odesa, Mykolaiv, and Kherson regions became attractive centres of criminality concentration. The border-zone factor for criminals facilitates illegal activity, increases the attractiveness of criminal activity in terms of planning and committing crimes, disappearing from the crime site and avoidance of criminal responsibility. It is established that in the absolute majority – more than 66% of crimes are being committed by young males aged 18-40 years. The vast majority of those who committed crimes had a secondary education, neither worked nor studied at the time of committing crime. Almost half of the perpetrators were convicted earlier, and they are characterized by an early recidivism. The attention is focused on the fact that a large number of persons who committed crimes were in a state of intoxication. The absurdity, excessive and unjustified cruelty, often with the use of firearms or cold weapons, are often characteristic of the activities of criminals in the studied regions.

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CUSTOMS PROCEDURES IN UKRAINIAN LEGISLATION: THE ISSUES OF CONCEPT, SYSTEM AND EUROPEANIZATION

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INTRODUCTION

The history of diversity of rules for a customs clearance of goods, which led to the application of different treatment to goods due to declared purpose of its movement across customs frontiers, can be traced back to the beginning of 19th century. That happened because of the transformation of the views on customs duties, which started to be viewed not as a charge for transportation of goods, as it used to be common in Europe for many centuries before, but as a consumption tax[1]. Eventually the movement of goods across customs frontiers for purposes, other than consumption or trade, becomes the basis for application of exemptions from customs duties and other indirect taxes. That, in turn, led to the creation of separate customs clearance procedures for such cases, which had to guarantee the implementation of the conditions for granting exemptions from taxation. A terminology, which is applied to such set of rules, differs from state to state. The most commons terms are «customs regimes» and «customs procedures».

For example, a procedure of customs warehousing was introduced in England in 1803 for such goods as tea, tobacco, coffee, wine and spirits[2]. In the French customs legislation this type of procedure was established in 1832[3]. The modern concept of transit started to form in the same period, which initially was concerned with transit duties, that comprised a proportion of conventional import duties[4]. The abolition of

[1] Кормич Б.А. Історія розвитку митної справи в Європі: періодизація та основні тенденції. *Lex Portus.* 2016. № 1. С. 59.

[2] Encyclopedia Britannica Dict. A.S.L.G.I. 11th Ed. Chisholm. 1910-1911-1922. 33 vols. Vol. 4. p. 200. URL: https://archive.org/stream/EncyclopaediaBritannicaDict.a.s.l.g.i.11thed.chisholm.1910-1911-1922.33vols/04.EncycBrit.11th.1910.v.4.BIS-CAL.#page/n217/mode/2up

[3] Asakura H. World History of the Customs and Tariffs. World Customs Organization, 2003. P. 214.

[4] Nicali A. Customs History. *A Historical Outlook on the Italian Customs Policy*. P. 15.

transit duties in certain European countries began only in the middle of the nineteenth century. At the same time, another countries, such as the then Russian Empire, did not recognize transit at all applying ordinary import duties to goods in transit. The final recognition of the freedom of transit occurred only after the Barcelona Convention on the Freedom of Transit of 1921 was signed. The Art. 3 that Convention prohibited the taxation of transit traffic by any kind of transit, import or export duties[5]. The rules for temporary admission, merely for commercial samples for that time, were introduced in the International Convention relating to the simplification of customs formalities, signed in Geneva on November 2, 1923 (Art. 10, 16 and the annex to Art. 16)[6].

Considering above mentioned, we can highlight two basic functions of the modern system of customs procedures:

a) formation of the system of exemptions from taxation and application of non-tariff measures on conditions of specific use of goods;

b) regulation of customs authorities' workflow, as well as actions of respective non-state subjects, for performing customs and (in some cases) other border formalities.

The latter is very important for overall state of border management in a particular country so far the customs procedures determine treatment which is applied to the goods in question and also to the all non-state actors involved into foreign trade transactions. So, it can be argued, that the approach to the role and place of customs procedures within the customs legislation may reflect the general public administration model which is adopted for border management. According to this, the views on public sector transformation from the «Old Public Management» to the «New Public Service»[7] may be utilized for understanding the differences between the concepts of «customs regimes» and «customs procedures». Besides, i the modern State is bind with a wide range of international (World Customs Organisation) and regional (regional free trade associations) standards in the issues of application of customs

[5] Convention and Statute on Freedom of Transit. Barcelona, 20 April of 1921. League of Nations Treaty Series. Vol. 7. Pp. 12–33.

[6] International Convention Relating to the Simplification of Customs Formalities, and Protocol of Signature. Geneva, 3 November 1923. Australian Treaty Series. 1925. No. 14.

[7] Robinson M. From Old Public Administration to the New Public Service. Implications for Public Sector Reform in Developing Countries. Singapore: UNDP Global Centre for Public Service Excellence. 2015. P. 4.

procedures, which erects an issue of influence of such standards on national administrative procedures, which is subject to transnational and global administrative law theories. Furthermore, in the case of European countries this is supplemented with the issue of europeanization of the respective legislation.

1. Customs Regimes vs. Customs Procedures: Why the Term Really Matters

The development of the initial concept of customs regimes in Ukrainian law started in in the mid-1990's. In particular, one of the first ways to address this topic, was the characterizing customs regimes as a one of means of a customs policy implementation[8].

However, Ukrainian customs legislation of that time did not define customs regimes, but operated the term «purpose of moving goods across customs frontiers», setting only three of them: a free use; a temporary importation or exportation; a transit. That classification covered various types of foreign trade transactions. So that, any classifications of customs regimes of that time were based not on legislative definitions, but on the analysis of the rules for specific procedures for particular goods. Moreover, at that time, customs regimes were established not only by the Customs Code of Ukraine of 1992, but also by a number of supplementary legislative acts[9].

Legal definition of «customs regime», as well as the exhaustive list of that regimes had been provided only in the second Customs Code of Ukraine of 2002 (which was later repelled). In addition, Customs Code 2002 included the provision that customs regimes was to be set solely by the Code. Basing on that regulations, Ukrainian law adopted the concept of customs regimes, which used a certain analogy with administrative legal regimes. In accordance to that approach «…customs regimes, as well as other types of administrative-legal regimes, should be considered as a sub-institute of administrative law»[10].

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[8] Кивалов С.В. Средства осуществления таможенной политики Украины. Одесса: Астропринт, 1995. С. 20–27.

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[10] Крестьянинов О.О. Правове регулювання митних режимів *:* автореф. дис... канд. юр. наук: 12.00.07. Х.: Національна юридична академія України ім. Ярослава Мудрого, 2008. С. 11.

Idea of administrative origin of customs regimes shifts the emphasis on finding common features between administrative and customs regimes, such as its content, structure and order of application.

However, the concept of the common background of administrative and customs regimes suffers a significant drawback: the views of Ukrainian (in fact – the post-soviet) jurisprudence upon the nature of legal regimes in administrative law. Due to that views the main purpose of administrative legal regimes lays within the State's function to protect public security and to response to possible or emerging security threats, thus «the grindstone of the administrative legal regimes' social function is the presence of elements of administrative coercion, restrictions and prohibitions that limit human rights»[11]. In fact, the administrative legal regimes are a certain exception to the general order public authorities functioning and consist of special «regime» rules of conduct.

At the same time, the system of customs regimes creates an ordinary procedure for the movement of goods across customs frontiers, since, in fact, it is not provided any other procedure then placing goods under a particular customs regime. In addition, the current Customs Code of Ukraine of 2012 (CCU) gives a clear answer to the question of the customs regimes' function, which according to Part 1 of Art. 70 CCU is «the application of the Ukrainian legislation on state customs affairs»[12].

Furthermore, from these position one can notice certain inconsistency in the definition of customs regimes, which is provided in Para. 25 of Art. 4 CCU, as a «complex of interrelated legal norms that according to the stated purpose of moving goods across the Ukrainian customs frontier determine the customs procedure for these goods, its legal status, taxation rules and determine its use after customs clearance». But in fact, «the purpose of the movement of goods across the customs frontier» and «the use of goods after customs clearance» are definitely the same thing. Basically, physical and legal persons import or export goods for the purpose of its use in a particular way. And the desired way of use of goods is the exact factor that determines the application of the procedure, tariff non-tariff regulation, etc.

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[11] Настюк В.Я. Белєвцева В.В. Адміністративно-правові режими в Україні : монографія Харків: Право, 2009. С. 29.

[12] Митний кодекс України від 13.03.2012. № 4495-VI. *Офіційний вісник України*. 2012. № 32. С. 1175.

In the above mentioned definition we rather see an attempt to impose extra regulative restrictions and to speculate that it is not the holder of procedure, but a customs authority is the subject who defines the way the goods in question shall be used after a customs clearance. This assessment concerns not merely rules on customs regimes, but generally passes as a red line through the whole CCU, which provisions are written from the point of view of customs authorities, not from the side of non-state actors involved in foreign trade. From this point the approach discussed is pretty common for classic public administration theory where «The public service was governed by precisely prescribed rules and… thus, it was expected to exercise minimal discretion in executing its tasks»[13]. Furthermore, in Ukrainian case the emphasis on control and compliance is multiplied by «local heritage» of the lack of respect to good governance principles, such as rule of law and due process.

Apparently the peculiarities of the above discussed approach are caused by the fact, that the whole concept of customs regimes has not been common for soviet legislation, where the roots of Ukrainian administrative law are. That concept has been brought from international rules and standards for customs procedures, basically from the instruments of the World Customs Organization (WCO). But returning to the historical background of specific rules for customs procedures, we once again face the «clear situation when a specific set of national rules and principles of administrative procedures, that is common for Western democracies, has been accepted as a standard at the international level»[14].

Strictly speaking, international standards in this area, primarily the rules of Special Annexes to the International Convention on the Simplification and Harmonisation of Customs Procedures, emphasize the need for the participating countries to fully ensure the declarants' ability to enjoy their rights to move goods in accordance with the desired way of further usage. For example, Standard 2, Section 2 of Special Annex B establishes that «Re-importation in the same state shall be allowed even if only a part of the exported goods is re-imported», or

[13] Bourgon J. Responsive, Responsible and Respected Government: Towards a New Public Administration Theory. *International Review of Administrative Sciences.* 2007. Vol. 73. No. 1. Pp. 7–26. URL: https://doi.org/10.1177/0020852307075686

[14] Kormych B. The Modern Trends of the Foreign Trade Policy Implementation: Implications For Customs Regulations. *Lex Portus.* 2018. № 5. Pp. 27-45 (39). URL: https://doi.org/10.26886/2524-101X.5.2018.2

Standard 2, Section 1 of the Special Annex D specifies that «National legislation shall provide for Customs warehouses open to any person having the right to dispose of the goods (public Customs warehouses)»[15]. At the same time, it is usually provided that respective procedures shall be directly established by national legislation. This type of standards basically creates a situation where, customs procedures itself may vary significantly in different countries, but in the same time the implications of application of such procedures shall be typical for any given country.

This conclusion brings us to ideas of transnational control over national administrative procedures and administrative decision making, that is pretty common for scholars sharing concepts of transnational or global administrative law. In brief this concerns covers the situation where «To ensure, even at a distance, that their and their constituencies' preferences are satisfied, the political actors of State A negotiating international commitments (ordinarily, but not necessarily, in the treaty form) can require State B's regulators to follow procedures of transparency, participation, reason-giving, and review»[16].

Applying the transnational control approach, one may see, that despite any attempts to impose a local views upon the rules specifying ways and means of performing customs formalities, international standards are pushing national legislator and national administrative authorities towards the compliance to internationally recognized objectives of such formalities. Basically, in this particular case the force of international standards is focused on the shift from the state oriented to mutually advantaged or even private actor oriented rules.

And the very first rule that hits the clear administrative law approach to customs regimes is the rules of Art. 71 CCU which, apparently, provide:

– the right of declarant «to choose the customs regime in which he wishes to place the goods, subject to the conditions of such a regime and in the manner prescribed by this Code»;

[15] International Convention On The Simplification And Harmonization Of Customs Procedures (As Amended). URL: http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new.aspx

[16] Mertensкötter P., Stewart R. Remote Control: Treaty Requirements for Regulatory Procedures. IILJ Working Paper 2018/2. MegaReg Series. Institute for International Law and Justice. New York University School of Law. New York, 2018. P. 12.

– the right of declarant to change «the customs regime in which the goods are placed… to another one, chosen by the declarant»;

– the specific way of placing goods under the chosen customs regime by means of «lodging a customs declaration and performing customs formalities».

All this does not comply with the general understanding of administrative legal regime as a set of rules to regulate a specific area, which is issued by the public authorities and which application is also initiated by public authorities. Contrary in the case of customs regimes, a non-state actor both choses, changes and initiates application of such regime to the goods in question.

When we talk about the choice of the customs regime by the declarant, this primarily concerns the choice between movement of goods into or out of the customs territory in the ordinary order (with the full taxation and application of non-tariff measures) or in the specific order (which provides the relief form customs duties and other taxes, not application of quantitive restrictions, etc). In the case of specific order, the proper preferences or reliefs are «exchanged» with the consent of the declarant to comply administrative restrictions on the usage of goods, submission of additional information, application of customs controls, etc. Consequently, the conditions of customs regimes are voluntary in that mean that the declarant always has the possibility to abandon them, by placing the good under different customs regime.

In this aspect, the entire system of customs regimes performs a coherence function. The respective legislation framework is to grant a coherence between securing interests of a State and meeting needs of non-state actors involved in foreign economic operations. Thus customs regimes comprise «a kind of general legal characterization of the main types of customs situations that determine the specific procedure for moving goods through the customs frontier, depending on its end-use (purpose of transition)»[17].

In a broader aspect, the system of customs regimes is an instrument for implementing modern trends to combine imperative and dispositive regulation within the administrative law to secure the maxima of rights

[17] Шахмаметьев А.А. Таможенный режим по законодательству России и Франции: Сравнительное исследование на примере режима таможенного склада : автореф. дис … канд. юр. наук: 12.00.14. М.: Академия управления МВД России, 2002. С. 18.

and legitimate interests of non-state actors. After all, the initiation of legal relations concerning importation or exportation of goods and the picking up the purpose for which goods are destined, is complete depends upon a decisions of non-state actors. Thus, the non-state actors define a specific content of customs procedures that are applied to the goods. In this aspect, customs regimes become close to procedures for administrative services provision, since public-administrative actions are carried out on the initiative of a non-state actor (declarant), and the purpose of such actions is to create conditions for the realization of private rights and interests. The important peculiarity of dispositive legal regulation within customs regimes is that the freedom of declarant's choice is not absolute, since it is implemented within the framework of legislative requirements regulating the procedural activities of customs authorities. Hence, the limitations of choice are exhausted by the set of behavior patterns, that are represented by the list of customs regimes[18].

In other words, each specific customs regime may be viewed as a system of procedural legislative rules, which regulates the application of substantive customs law in a given (typical) situation.

A customs regime serves as an envelope for exercising rights and obligations of state authorities and other persons involved in a particular situation a movement of goods through the customs border.

The appropriate «regime» rules are basically utilized to provide the functioning of customs authorities, indicating them how to conduct the customs clearance procedure. And the system of customs regimes, as a set of typical models for the movement of goods through the customs frontier, empowers the harmonization of the freedom of choice of declarants (that is a dispositive legal regulation) with the competence of customs authorities as governing subjects, which in accordance with Art. 19 of the Constitution of Ukraine «shall act only on the basis, within the limits of authority and in the manner envisaged by the Constitution and laws of Ukraine»[19] (which is an imperative legal regulation).

For example, that is the exact point, the EU customs legislation is focused. For example Art. 150 of Union Customs Code (UCC) dealing with the choice of customs procedure provides, that «Except where

[18] Гречаний Д.М. Правові основи застосування митного режиму тимчасового ввезення : автореф. дис … к.ю.н.: 12.00.07. Київ: МАУП, 2013. С. 8.

[19] Конституція України від 28.06.1996. *Офіційний вісник України.* № 254к/96-ВР 2010 р., № 72/1 Спеціальний випуск. Ст. 2598.

otherwise provided, the declarant shall be free to choose the customs procedure under which to place the goods, under the conditions for that procedure, irrespective of their nature or quantity, or their country of origin, consignment or destination»[20].

At this point we face the need to make an important notice that the resolving individual cases in administrative law is considered not as regime, but as procedural issue. And precisely at these grounds one may draw the line between customs regimes and administrative legal regimes.

In addition, within the «procedural» concept, a customs declaration in the form of Single Administrative Document (SAD) receives its original meaning, that it is «not an exclusive customs document» but is «a substitute for many administrative forms»[21]. In this case, the SAD performs a dual function:

1) Upon a SAD submission it is an application initiating the administrative procedure, which is confirmed by its registration by the customs office;

2) Upon completion of customs clearance, a SAD becomes an administrative act, which contains decisions of the customs office to release goods, to recognize its customs value, classification, quantity, etc.

Hence we cannot go over the terminological dispute between «customs regime» or «customs procedure»[22]. Moreover, as a matter of fact, the term «customs regime» is used in a rather limited number of national legislations, instead international instruments and the EU customs law are adopting the therm «customs procedure». For example, due to WCO position «Customs Procedure means the treatment applied by the Customs to goods that are subject to Customs control»[23].

It is possible, actually, to refer to the fact that the International Convention On The Simplification And Harmonization Of Customs Procedures uses the terms «procedure» and «regime» as synonyms in its English and French texts respectively. However, it should be understood

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[20] Regulation (EU) № 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code. OJ L 269. 10.10.2013. Pp. 1–101.

[21] The single administrative document (SAD). Characteristics. URL: http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/sad-characteristics_en.pdf

[22] Кормич Б.А. Митні режими як інститут митного права. *Митна справа.* 2013. № 6. С. 86–92.

[23] Glossary Of International Customs Terms. D/2013/0448/20. Brussels: World Customs Organization, 2013.

that the «regime approach» is the feature of French administrative law, which actually replaces the concept of procedures. For example, there is exist the concept of «institutions governed by administrative law regime» as the institutions which «perform the task of public service»[24]. So, in the operational aspect of the corresponding French term «regime» comprises the order in which public authorities perform the functions assigned to them. Finally, it should be noted that the term «regime» had been adopted by Ukrainian customs law something about 1994 not from the French customs legislation, but from the Russian Customs Code of 1993, and even in Russian Federation the term «regime» was later repelled.

The issue, in fact, should be viewed from a slightly different angle. That is the issue of the current focus of administrative law at the enforcing rights and legitimate interests of non-state actors in relations with state authorities, and the need to return the customs legislation in compliance with that principle, as well as, to adopt the modern principles of trade facilitation.

As it has been mentioned, Ukrainian national administrative law defines a procedure as a process of decision-making on an individual case, in the words that is a sequence of actions of a public authority in response to an application of a person exercising his or her rights. Contrary, a regime, in most cases, is a certain set of rules that in one way or another limits a usual procedure of exercising of human rights (state border regime, classified information regime, regime of emergency, etc.). In this respect the «regime» approach in customs legislation poorly conforms in line with the modern principles of free trade and trade facilitation, since it immediately entails ghosts of prohibitions and restrictions.

But from the point of «procedural» concept the issue looks quite different. For example, there is an import or export as a type of foreign trade transaction, in the sense of the Law of Ukraine «On Foreign Economic Activity» and there are procedures for import or export, as customs administration decision-making process for individual cases of movement of goods in question through the customs frontier. In other words we are dealing with a special type of administrative procedure. A person needs to import or export certain products, the law permits to do

[24] Брэбан Г. Французское административное право: Пер. с фр. / Под ред. и со вступ. ст. Боботова С. В.. М.: Прогресс, 1988. С. 52.

so, and the person addresses the customs office to implement that right. The customs office, in turn, carry out a sequence of actions regarding issuing the permission. Thus, it is an ordinary service function of the state.

The flexibility of customs procedures and the right for initiation and changing procedures on the side of non-state subjects for a great extend corresponds with the basic idea of New Public Service – «serve, rather than steer»[25]. Furthermore within this service function, the above discussed coherence between dispositive and imperative regulation provides achievement of the broader task to provide a framework to combine two different set of government's actions to meet its responsibilities «to facilitate individual self-interest» and «to promote citizenship, public discourse, and the public interest»[26].

2. Basic Elements of Customs Procedures

To understand the basic design elements of a customs procedure it should be distinguished its three key elements, which are utilized in above mentioned WCO definition «treatment applied by the Customs to goods that are subject to Customs control»[27]:

1) certain actions of a customs administration regarding the application of law – «a treatment that is applied by the customs»;

2) «goods» as a particular object of application of such treatment;

3) specific status of goods as a «subjects to customs control».

So, the customs procedure is a kind of decision-making process where a customs administration on request of a holder of procedure takes a decision to release or deny releasing the goods in question, which also may lead to a changing of a customs status of goods. The treatment itself may be described as a set of formalities that have to be performed in the course of such decision-making workflow. The respective «goods in question» comprise the object of the decision is to be made by customs authorities. Finally the term «being the subject to customs control» determines the time frames of the particular customs procedure, so far such procedures may be applied only within duration of customs control.

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[25] Denhardt R., Denhardt J. The New Public Service: Serving Rather Than Steering. *Public Administration Review.* 2000. Vol. 60. No. 6. Pp. 549–559.

[26] Ibid. P. 557.

[27] Glossary Of International Customs Terms. D/2013/0448/20. Brussels: World Customs Organization, 2013.

Besides, considering the concept of customs procedure as a set of rules to resolve individual cases in typical customs situations makes possible to distinguish several peculiar characteristics of the customs procedure:

1) any given customs procedure is established to provide an application of customs legislation to goods entering or leaving a customs territory;

2) any given customs procedure corresponds to the typical situation in which particular goods are entering or leaving the customs territory;

3) the main functional purpose of customs procedure is to meet needs of citizens and enterprises for importation or exportation of goods;

4) the rules of customs procedure and supplementary substantive customs laws have a specific object of application, which is goods (products) in question;

5) customs procedures start with lodging of customs declaration;

6) customs procedures end when the declared purpose of placing the goods under such procedure is achieved.

The connection between the duration of customs procedure and application of customs controls to goods in question reviews an important differences between «general» customs procedures (like import or export) and specific customs procedures (for example, customs warehousing, inward or outward processing, etc.).

In the first case the purpose of placing goods under the customs procedure is achieved after the end of procedure and, respectively, release of goods form customs control. For example for import procedure such purpose shall be the free use of goods on the customs territory, which may be enjoyed right after the customs clearance.

As for specific customs procedures, the purpose for which goods are placed in such procedures, basically, is to be achieved during the term while the procedure is performed and respective goods are under customs supervision. For example it may be storage of goods placed under customs warehousing procedure or usage of goods placed under temporary admission procedure. The fact that goods are under customs supervision throughout the specific customs procedures emerges demands for holders of procedure to perform additional actions to finalize such procedures. Typically respective goods should be placed under another procedure that grants release for free circulation (import,

re-import, re-export) or should be abandoned in accordance with legislation rules.

Thus the time frames of customs procedures are determined by legal actions (deeds) or emerging of legal facts.

The basic standard for customs legislation is that a customs procedure may be initiated only in specific manner of legal action, which is a customs declaration lodging. For example, The International Convention On The Simplification And Harmonization Of Customs Procedures (Section 1, Special Annex A) uses the definition «Customs formalities prior to the lodgement of the Goods declaration» which covers operations carried out from the time of introduction of goods into the customs territory «until goods are placed under a Customs procedure»[28]. National customs legislations are more specific on this subject. The already mentioned Art. 71(2) of CCU 2012 clearly states that «placing goods under customs regime is made by means of declaration»[29]. The same rule is provided in Art. 158 (1) UCC «All goods intended to be placed under a customs procedure… shall be covered by a customs declaration appropriate for the particular procedure»[30].

At the same time, a termination of a customs regime may be either due to a number of legal actions (release of goods, placing goods under another customs procedure, abandoning goods, confiscation of goods) or due to legal facts (damage or loss of goods due to *force majeure*). Besides, the maximum time limits for application of customs procedures may be set by legislation or, within such limits by the decision of customs authorities (as, for example, in the case of temporary admission).

Besides, the legislation may set territorial boundaries for application of certain customs procedures, which are narrower than the customs territory. Such territorial application may be limited to the territories of

[28] International Convention On The Simplification And Harmonization Of Customs Procedures (As Amended). URL: http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new.aspx

[29] Митний кодекс України від 13.03.2012 № 4495-VI. *Офіційний вісник України.* 2012. № 32. Ст. 1175.

[30] Regulation (EU) № 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code. OJ L 269. 10.10.2013. Pp. 1–101.

free zones (for respective customs procedures) or zones of customs control (for customs warehousing, duty-free trade, inward processing).

The regulations, which comprise in customs procedures, form a few blocs of rules focusing at different application aspects of said procedures. From our post of view, by analyzing the definition of Para 25, Art. 4 CCU and rules of Title 5 CCU, it is possible to distinguish six blocs of such rules, which form the regulative space of any given customs procedure:

1) conditions for placing goods under the customs regime;
2) procedural rules for performing customs formalities;
3) rules for application of tariff measures;
4) rules for application of non-tariff measures;
5) a customs status of goods after release;
6) restrictions for use of goods after release.

Conditions for placing goods under a customs procedure can be divided in general conditions and specific conditions.

Under general conditions hereby is understood the regulations referring to Art. 196 CCU prohibitions on the movement of certain goods across the customs frontier. Such prohibitions are applied to all goods arriving to the customs territory, thus the noncompliance makes it impossible to place such goods under any of customs procedure.

Special conditions are referred to regulations for placing goods under particular customs procedures. The later regulations basically provides four types of conditions:

– customs status of goods prior to placing under a customs procedure (Ukrainian goods or non-Ukrainian goods);

– direction of movement of goods (arriving or leaving the customs territory);

– restrictions on the movement of goods through the customs frontier (Art. 197 UCC), which shall be complied by the holder of procedure to complete the customs clearance;

– a need of obtaining a customs authorities' permission to place goods under certain procedures (for example, inward or outward processing).

As for *procedural rules for performing customs formalities*, the on of the interpretations of a customs procedure due to interpretation of Para 21, Art. 4 CCU is «the complex of customs formalities and the order for its accomplishment».Customs formalities itself are defined as

«a set of actions that are to be performed by citizens and enterprises on the one side and customs authorities on the other» (Para 29, Art. 4 CCU). The purpose of customs formalities is to provide compliance with the legislation, which in other words is the implementation of the substantive law.

Due to the Art. 186 CCU, the content of customs formalities in each case, apart from the chosen customs procedure itself, depends on:

– means of transport (which may be air, water, road, rail transport, pipelines and power supply lines);

– ways of transport (which determines by type of contract with carrier and include cargo shipments; accompanied baggage; unaccompanied baggage; hand luggage; international mail; international express shipments).

From the procedural point of view a customs procedure includes the sequence of proceedings, i.e.: lodging goods declaration; payment of customs duties; performing customs control measures; performing official and state control measures; completion of customs clearance, etc.

Rules for application of tariff measures are covered by the Art. 286 CCU «Imposition of duty on the goods moved across the customs border of Ukraine depending on the customs procedure». On that gourds Ukrainian customs legislation provides five types of taxation for goods arriving or leaving customs territory:

1) payment of all customs duties – the goods are subject to full taxation full in accordance with customs and tax legislation;

2) exemption from customs duties – goods are exempted from payment of customs duties, a repayment of previously paid duties and taxes may apply;

3) conditional full exemption from customs duties b – exemption from payment of the accrued customs debt is subject to compliance with the requirements of the customs procedure;

4) conditional partial exemption from customs duties under temporary admission procedure – 3 presents of amount of duties and taxes payable for release for free circulation for each full or incomplete calendar month of the temporary importation;

5) conditional partial relief from import duty under outward processing procedure – positive difference between the amount of customs duty occurred for importation of the processed goods and duty

was to be payed in case of importation of goods, exported for outward processing,

Rules for application of non-tariff measures, basically, included two standard cases, whether goods are the subject to non-tariff regulation of foreign trade (import and export procedures), or whether they are not.

National customs legislation provides two different customs statuses of goods – «Ukrainian goods» and «foreign goods». The customs statutes of «Ukrainian goods» (Para 61, Art, 4 CCU) covers goods: a) wholly obtained (produced) in the customs territory of Ukraine and not incorporating imported goods (b) goods imported to the customs territory of Ukraine and released for free circulation; (c) obtained (produced) on the customs territory of Ukraine from the goods of two above mentioned categories. Thus customs status of «foreign goods» refers to all goods, which are non «Ukrainian» ones. One of the key aspects of the application of chosen customs procedure is either maintaining the customs status of the goods, or changing it after the completion of the customs clearance. This fact is crucial for application of specific rules for usage of goods, placed under customs procedures.

Finally, *restrictions for use of goods after release* may be in forms of: 1) prohibition to sale or transfer to third parties; 2) prohibition to use goods; 4) prohibition to change the characteristics of goods. Depending on the chosen customs procedure, one or few of such restrictions may apply.

Considering two last points, in terms of the purpose of placing goods under a customs procedure it is possible to allocate two such basic purposed that are critical for holder of procedure: changing the customs status of the goods or obtaining permission to perform certain actions with goods without changing its customs status.

3. The Classification of Customs Procedures: the Road to Europeanization

Another issue that demands consideration is the classification of customs procedures in Ukrainian legislation, which according to Art. 70 CCU includes: import (release for free circulation); (2) re-import; export (final leave); re-export; transit; temporary import; temporary export; customs warehousing; free customs zone; duty-free trade; inward

processing; outward processing; destruction or elimination; abandonment to the state[31]. However, according to Annex XV to Chapter 5 of the Association Agreement between Ukraine and the EU on the approximation of customs legislation, the relevant articles of EU Modernized Community Customs Code 2008 (MCC) regulating customs procedures are listed as the rules requiring approximation of Ukrainian legislation to the *acquis communautaire*[32].

Furthermore, the respective provisions of Association Agreement are based on repelled MCC 2008[33], which is much different from current Union Customs Code 2013 in force[34]. This also appears to be the issue, so far comparing to the previous MCC 2008, the system of customs procedures, that is provided in current UCC 2013, is based on much more advanced logic with respect to the issues of exemption from taxes and performing the service functions of customs authorities.

The grounds of classification, as well as the structure of respective UCC Chapters, are drafted from the non-state actors' point of view. For example the division of procedures depends from whether goods are arriving or leaving the customs territory, and from existence of reliefs from customs duties under conditions of specific restrictions for goods' usage. Thus UCC provides not a simple list of procedures, but rather a guideline where the rules go after objectives of foreign trade operations.

In accordance with the classification of Art. 5 (16) UCC, there are only three types of customs procedures: release for free circulation, special procedures and export. Basically, such classification most accurately reflects the functional purpose of customs procedures – application of tariff and non-tariff barriers. Accordingly, there are two procedures in which tariffs and non-tariff restrictions are fully applied – «import» and «export», as well as «special procedures» that provide exemptions from customs duties and other trade policy measures under certain conditions.

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[31] Митний кодекс України від 13.03.2012 № 4495-VI. *Офіційний вісник України.* 2012. № 32. Ст. 1175.

[32] Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. OJ L 161. 29.5.2014. Pp. 3–2137.

[33] Regulation (EC) No.450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code). OJ L 145. 04.06.2008.

[34] Regulation (EU) № 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code. OJ L 269. 10.10.2013. Pp. 1–101.

Besides, this system of customs procedures has a number of operational features.

In particular, the UCC does not distinguish the re-import as a separate customs procedure, regarding it to be an integral part of the release for free circulation procedure (Art. 201 UCC), which serves as the basis for relief from import customs duties (Article 203 UCC «Returned Goods»).

As for the goods taking out of the EU customs territory, the UCC refers to both export (Art. 269 UCC) and re-export (Art. 270 UCC). But due to the general approach adopted in the Title VIII of UCC export and re-export rather are the varieties of a single procedure for Union-goods and non-Union goods, respectively. Such thesis gets its confirmation in the aforementioned classification of customs procedures in accordance with Art. 5 (16) UCC, which defines a single export procedure. Besides, within the Chapter VIII of the UCC in almost the same manner treats a temporary export, which is not a separate customs procedure, but as the grounds for goods in question to «benefit from export duty relief, conditional upon their re-import» (Art. 277 UCC «Exemption from export duty for Union goods temporarily exported»).

The Art. 210 UCC provides four categories of special procedures, which include:

(a) transit, which shall comprise external and internal transit;

(b) storage, which shall comprise customs warehousing and free zones;

(c) specific use, which shall comprise temporary admission and end-use;

(d) processing, which shall comprise inward and outward processing.

Within this list, the end-use procedure worth to be highlighted, so far despite a total number of fourteen customs procedures, Ukrainian legislation does not provide any analogy. According to Art. 254 (1) UCC «under the end-use procedure, goods may be released for free circulation under a duty exemption or at a reduced rate of duty on account of their specific use». Thus, the UCC treats all cases of application of tax preferences due to specified end-use as a separate customs procedure. Contrary Ukrainian legislation views such cases as a tax benefits (Art. 282 CCU) or as a special duty treatment of certain products

(Art. 287 CCU), which are applied within frameworks of an ordinary import procedure.

The EU approach to this issue looks quite logical, so far the goods subject to application of tax benefits cannot be viewed as released for free circulation for a full extent, since, on the one hand, the holder of procedure has to comply with the conditions for providing said tax benefits, on the other hand the customs authorities have to supervise that compliance.

Therefore, within the framework of the end-use procedure, UCC explicitly provides the powers of customs administrations to establish conditions for prior authorization «under which the goods shall be deemed to have been used for the purposes laid down for applying the duty exemption or reduced rate of duty» (Art. 254 (2) UCC, and to verify compliance with such conditions «in order to avoid abuse, customs supervision shall continue for a period not exceeding two years after the date of their first use for the purposes laid down for applying the duty exemption or reduced rate of duty» (Art 354 (3) UCC).

On the other hand, we can define a series of customs procedures existing in Ukrainian legislation, which are not considered as a separate customs procedures due to the *acquis communautaire*. For example Title V UCC «GENERAL RULES ON CUSTOMS STATUS, PLACING GOODS UNDER A CUSTOMS PROCEDURE, VERIFICATION, RELEASE AND DISPOSAL OF GOODS», includes Chapter 4 «Disposal of Goods», which are a kind of actions, which the owner of goods, or customs authorities may perform before placing good under customs procedure. The actions for the disposal of goods include: destruction of goods (Art. 197 UCC), the sale of goods (Art. 198 (1) UCC), abandoning goods to the State (Art. 199 UCC). But, once again, all these measures are merely a legal facts, which are the reason for the termination or initiation of customs procedures.

That position is clarified in the provisions of Art. 198 (2) UCC, which sets up the both cases, providing that:

– Non-Union goods which have been abandoned to the State, seized or confiscated shall be deemed to be placed under the customs warehousing procedure. They shall be entered in the records of the customs warehousing operator, or, where they are held by the customs authorities, by the latter.

– Where goods to be destroyed, abandoned to the State, seized or confiscated are already subject to a customs declaration, the records shall include a reference to the customs declaration. Customs authorities shall invalidate that customs declaration.

Furthermore, according to the Art. 198 (1) UCC, measures for the disposal of goods may be taken on the initiative of the customs authority in an exhaustive list of cases.

Finally, the UCC does not specify a customs procedure, which can be similar to the Ukrainian duty-free trade procedure. At the same time, duty-free shops are considered as a specific way of application of the customs warehousing procedure in which the retail sale of goods placed in such procedure is permitted. This approach is commonly used in the current practice of customs regulation. For example, in the same manner it is applied in the US law, which classifies duty-free stores as «class 9 warehouses» (§ 19.35 US Code)[35].

CONCLUSIONS

Current Ukrainian system of customs procedures is based on a mix of old post-soviet tradition of administrative law and modern international legal standards for customs procedures emerged within WCO frameworks. The traditional «administrative» part tries to view respective rules as a specific types of administrative legal regimes, which is more state-focused approach intended to impose extra limits on international trade in goods. Thus it is hardly compatible with internationally backed trends of trade facilitation.

Contrary, the international standards in the field promote a procedural approach, where customs procedures are treated as a rules of proceeding for application of substantive customs laws. The latter approach is rather focused on meeting needs and enforcing rights and legal interests of non-state actors of international trade. Thus the shifting from «regime» views to «procedure» ones may contribute implementation of trade facilitation measures due to obligations ether within WCO Kyoto Convention and WTO Trade Facilitation Agreement.

Thus customs procedures should be understood as a sets of certain rules of proceeding binding customs authorities and other persons

[35] US Code. § 19.35.

concerned towards performing customs formalities, and in some cases, other border formalities. In this respect customs procedures are a specific typed of administrative procedures utilized for performing border administration. So far the customs legislation provides a set of customs procedures representing typical purposes of shipping goods onto or out the customs territory, which is accompanied by rights of the declarant to choose and change a customs procedure, the whole system is granted sufficient flexibility to meet needs and demands of the modern international trade. In this respect customs procedures sets the order of resolving individual cases for obtaining permission to bring goods into or out the customs territory.

Besides, customs procedures are traditionally connected with entire State financial system and also with foreign trade policy in general, so far the application of the chosen custom procedure triggers up the application of the tax legislation and the legislation on quantitative restrictions on foreign trade. Hereby, the other function of customs procedures is to set a system of reliefs from customs duties and non-tariff measures, which is proposed in exchange for compliance with certain restrictions on usage of goods on customs territory.

The fact that customs procedures are bind with international standards makes them to influence the whole system of public administration in the field bringing it in compliance with general principles of good governance fostering in a number international instruments dealing with the trade facilitation. Thus in a broad view the development of modern customs procedures is a part of emerging trends of transition from current New Public Management to New Public Service concept in State administration.

Finally, the realization of tasks related to the approximation of Ukraine's customs legislation to the customs *acquis communautaire* requires the introduction of amendments to the CCU in order to establish a harmonized term «customs procedure» and to bring the system of such customs procedures in line with the UUC 2013. Of course, the last task entails the necessity of reforming of supplementary secondary legislation. But, due to the declared European integration tasks of Ukraine, it makes sense to ensure the development of customs legislation in maximum harmonization with international and European standards.

SUMMARY

The present paper provides the analyses of the concept of customs procedures, which is adapted in Ukrainian legislation with respect to such issues as conformity with the modern trends in public administration, international standards on trade facilitation and approximation to EU customs rules. The hypothesis is based on conclusions that the history of the modern approach to customs procedures can be traced back to the beginning of 19-th century when the customs has widely adopted a different treatment to goods due to declared purposed for its introduction into the customs territory. Thus the diversity of customs procedures provided different cases for reliefs form customs duties and, respectively, different workflows for a customs clearance of such goods. It is also argued, that different approaches to the terminology, which is used in customs legislation, namely the utilization of terms «customs regime» or «customs procedure» may reflect different understanding of the role and functions of customs authorities towards the border management. In Ukrainian case, the use of term «customs regimes» is caused by post-soviet heritage in the issues of public administration, that is badly comparable with the modern trends of trade facilitation. Thus the adoption of the concept of «customs procedures», which are a specific type of administration procedures, looks very promising, concerning the implementation of obligations of international instruments, such as WTO Trade facilitation agreement. Besides, the «customs procedures» concept is more relevant the current focus of public administration on meeting needs of private actors, whilst protecting public interests. To that end the important role place the internal design of customs procedures, which is also discussed in the paper. Finally, the obligations within Association Agreement between Ukraine and EU towards the approximation of customs legislation appears to be the decisive factor the development of Ukrainian system of customs procedures for the nearest decades. With this respect the paper reviews the main differences between the EU customs procedures and the Ukrainian ones to reveal the possible ways and means of the approximation.

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28. US Code. § 19.35. URL: https://www.ecfr.gov/cgi-bin/text-idx?SID=3434bae86dee6528a7d3bfa443b5649b&mc=true&tpl=/ecfrbrowse/Title19/19cfr19_main_02.tpl

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THE REGIME OF THE MILITARY POSITION AS AN ELEMENT OF THE SYSTEM OF ADMINISTRATIVE MEANS OF EMERGENCY LEGAL REGULATION

Kuznichenko S. O.

INTRODUCTION

Complications of the military-political situation after the spring of 2014 dramatically influenced the development and functioning of all institutions of public authority without exception. The provisions of legal acts defining the direction of protection of the territorial integrity of the state, the rights and freedoms of citizens, the protection of law and order as components of the national security of Ukraine have undergone significant changes. These circumstances prompted domestic administrative-legal science to intensify scientific research in the field of emergency legal regulation. Among the legal means intended to eliminate dangers and threats, the administrative-legal regime of martial law occupies an important place, and recently, given the existing military-political situation that has developed in Ukraine, it is an object of particular scientific interest. In this direction, researchers help their candidate to defend PhD theses and doctoral dissertations, publish a large number of monographs and scientific articles, violate the problems of emergency legal regulation in the context of the existence of military threats in theses and reports of numerous scientific conferences.

Only in the last five years, the phenomenon of emergency legal regulators, as a means of ensuring the national security of Ukraine, the rights and freedoms of citizens, ways of their functioning, forms of legal manifestation in the relevant administrative and legal regimes, etc., O.V. Ahapova, S.Ya. Bezkorovainyi, N.M. Biriukova, I.S. Vasylenko, T.V. Vronska, V.O. Holub, V.K. Horovenko, D.O. Yezerskyi, V.V. Yemanov, V.O. Ivakha, N.H. Klymenko, N.V. Kovalenko, V.Ye. Kovryhina, Yu.D. Kuchynskyi, O.V. Levchenko, Yu.O. Leheza, V.V. Malikov, O.V. Makovska, V.V. Maltsev, Yu.V. Nikitin, L.O. Ostapenko, Yu.V. Pavlyshyn, V.H. Pylypchuk, M.L. Pohrebytskyi, A.I. Rutar, O.Yu. Salmanova, A.S. Slavko, R.M. Skrynkovskyi, O.M. Sobol, V.V. Sokurenko, M.P. Stelbytskyi, V.V. Trotsko,

V.P. Tiutiunnyk, Yu.O. Fihel, A.I. Kharchuk, O.L. Khytra, L.H. Chystokletov, V.Y. Shevchenko and others have turned their scientific views. The presented spectrum of researchers leaves no doubt that the problem of scientific substantiation of legal regimes belongs to the priority ones. Although the unity in the scientific environment regarding the definition of the legal nature of this phenomenon, its place in the system of law and in the system of legal sciences up to nowadays has not been achieved, and the use of the categories of "legal regime" and "administrative-legal regime" without specifying the characteristic features and its, the structure generates inconsistent scientific conclusions.

Despite the fact that the phenomenon of extraordinary legal regimes was the subject of research by the theorists of law, administrators, specialists in criminal and criminal law, researchers in the field of agrarian and environmental law and other branch legal sciences, however, domestic law science today does not provide detailed answers to a number of questions concerning the sufficiency and adequacy of the grounds for the introduction of the right regime of martial law, the feasibility of the existence of all the restrictions of rights and freedoms on condition of its operation.

The question of the legal regime of the martial law as an extraordinary administrative and legal regulator was raised by us in repeated previous studies, however, the adoption of the Law of Ukraine "On the Legal Status of Military Status" No. 389-VIII of May 12, 2015, the introduction in the separate territories of Ukraine of a martial law by Decree of the President of Ukraine "On the Introduction of the Martial Law in Ukraine" of November 26, 2018, No. 393/2018, makes it necessary to return to this problem in the future, since the new legislation establishes new unique legal relations and for the first time since gaining independence by Ukraine, applies this legal regulator in practice.

The purpose of the study is to find out the place of the legal regime of martial law in the system of domestic emergency administrative legal regulators and study the legal grounds for its introduction.

1. Location of the Legal Regime in the System of Administrative Means of Extraordinary Legal Regulation

Under normal circumstances, normal livelihoods of society are supported by historically formed political, legal and economic systems,

and the established mechanism of governance, which provides for the possibility of using state power measures to ensure stability in society. Such measures allow to maintain the rule of law in the society, provide public safety, protect the rights and freedoms of citizens, etc. However, their application is effective only in a stable socio-political environment, and impossible – when there are extraordinary (extraordinary, extreme, special) circumstances that violate the normal livelihoods of citizens, the functioning of society and the state.

Such circumstances may be of a military nature (aggression from the outside or direct threat of such aggression) or arise under conditions of internal state character (mass riots, attempts to unlawfully change the constitutional order, natural disasters, man-made disasters, etc.). In this regard, researchers of extraordinary legal regulators refer to them, including the regime of martial law, in that part of the law, which reflects the social orientation of political regimes.

Defining it, by the comparative comparison of V.A. Fiodorov, a universal instrument of social engineering, which can serve as an effective means of freedom and security of citizens, as well as a powerful weapon of class domination[1,2].

As we have noted above, in recent years the situation of Ukraine in many areas of national security has considerably aggravated. This is being influenced both by factors of the internal development of the state and foreign policy circumstances. The past decade has affected the unpredictable changes in the military-political situation in the world, which could not but affect Ukraine. As a result, changes took place in the geopolitical, military, economic and socio-legal plane, which directly affected the security aspects. An analysis of the Strategy of National Security of Ukraine, the Military Doctrine of Ukraine and other similar acts make it possible to distinguish in this part of socio-political relations their external and internal aspects[3].

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[1] Федоров В.А. Правовой институт исключительного (военного и чрезвычайного) положения в Российской Федерации : дис. ... канд. юрид. наук : 20.02.03 / Моск. воен. ин-т. погран. службы РФ. Москва, 2003. С. 116.

[2] Радченко В.И. Чрезвычайное и военное положение в России (конституционно-правовые проблемы) // Вестник Саратовской государственной академии права. 1998. № 3 (14). С. 110.

[3] Про рішення Ради національної безпеки і оборони України від 2 вересня 2015 року «Про нову редакцію Воєнної доктрини України» : Указ Президента України від 24 верес. 2015 р. № 555/2015. URL: http://zakon.rada.gov.ua/laws/show/555/2015 (дата звернення: 02.05.2019).

In particular, the external ones include: the absence of military-political stability, the emergence of disputed territorial, interethnic, legal and other problems, which, in turn, often grow into military conflicts; destabilization of peaceful initiatives of a number of states on the most important military-political aspects of international security; the presence of an increase in the illicit circulation of nuclear and chemical materials; illegal migration; smuggling of weapons, ammunition, poisonous substances, and so on. The internal aspects include: destabilization of the situation in the financial and scientific and production activities; interethnic, anticonfessional confrontation; acute crisis phenomena in the socio-political sphere; the spread of organized crime into a transnational anti-social system and others.

It follows that legal rules that are designed for law enforcement in normal relationships can be ineffective in extraordinary circumstances. Therefore, the resolution of a crisis situation with ineffective norms can be ensured only by providing public authorities with discretionary powers provided by coercive institutions. The reason for imposing extraordinary legal regimes is the present danger, which threatens values, national interests. Extraordinary legal regimes are caused by two grounds taken in unity: a high degree of danger threatening national interests and invincibility of this danger by other means, except the introduction of extraordinary legal regimes.

It should be noted that the emergence of only one danger is not enough to justify the introduction of an extraordinary legal regime. Such a necessity is recognized as exceptional, caused by an extremely dangerous situation in which the state is compelled to resort to intensive restrictions on the persons who are in its territory as the last resort to eliminate the threat of danger, because other means are absent or inadequate[4].

The actual cause of emergency legal regimes is a danger that threatens the state and society (not a single person in the general order, but if the danger threatens the president, people's deputy, statesman, then this danger may be recognized as a danger to the state level)[5]. The legal basis takes place throughout the time of existence of danger. At the same

[4] Кузніченко С.О. Адміністративно-правовий режим воєнного стану : монографія. Харків : Право, 2014. С. 12–13.

[5] Державний класифікатор надзвичайних ситуацій ДК 019–2010: затв. наказом Держстандарту України від 11.10.2010 р. № 457. URL: http://zakon.rada.gov.ua /rada/show/va457609-10 (дата звернення: 04.05.2019).

time, the termination of the threat of damage indicates a lack of legal basis for extreme legal regimes.

While implementing an emergency regime, it is important to adhere to the principle of adequate response done to prevent excessive interference of state bodies in the constitutional status of the individual. The carrier of the emergency regime is the territory in which the dangerous factors arose. The object of the emergency regime is social relations that affect the degree and nature of the threat of security, the state of public order and life. The choice of a regime depends on the severity of the crisis and the characteristics of its elements: the degree and type of security threat; the nature of the striking factors; magnitude and time aspect of the occurrence of an emergency; multiplicity of consequences, their chain character.

Consequently, the extraordinary legal regimes are quite closely related to the legal status of a person: recent legal phenomena include the rights and responsibilities of the subject. All extreme regimes limit the rights and freedoms of citizens, therefore, such restrictions should, ideally, be fixed only by law. Specific parameters of the legal regimes differ significantly: each regime establishes a certain number of prohibitions and positive obligations. They vary in the depth of change in the constitutional status of citizens, as well as in the territory in which the regime is introduced, and in the course of the regime's operation.

Adoption of the Law of Ukraine "On the Fight against Terrorism" introduced into law a new type of emergency administrative-legal regime – a regime of antiterrorist operation (a special procedure for public administration that can be introduced in the area of the anti-terrorist operation) at the time of its implementation, and provide for the subjects of the fight against terrorism, defined by the Law, special (specific) powers necessary for the release of hostages, ensuring the safety and health of people (citizens) who have been in the area held I counterterrorist operation, the normal functioning of state bodies, local authorities, enterprises, institutions, organizations, etc.). The area of the anti-terrorist operation is defined by the leadership of the antiterrorist operation of the area of land or water area, vehicles, buildings, structures, premises and territories or water areas adjacent to them and within which an anti-terrorist operation is carried out[6].

[6] Про боротьбу з тероризмом : Закон України від 20 бер. 2003 р. № 638-IV. URL: https://zakon.rada.gov.ua/laws/show/638-15 (дата звернення: 04.05.2019).

The adoption of the Law of Ukraine "On the peculiarities of the state policy of ensuring the state sovereignty of Ukraine in temporarily occupied territories in the Donetsk and Luhansk regions" provided legal preconditions for the political, economic and social integration of certain districts of Donetsk and Luhansk regions to the national legal system and defined the powers of special state institutions in relation to direction, coordination and control over management activities in these territories. However, the rules of this law are represented only by such an extraordinary regulator as the regime of entry / departure of persons, the movement of goods to / from temporarily occupied territories in the Donetsk and Luhansk regions[7].

The basis of the legal regulation of social relations in special conditions caused by emergency situations of a military nature are the Constitution of Ukraine, laws, regulations of the President and the Government of Ukraine, certain central and local government bodies. The set of normative legal acts that regulate the procedure for the introduction, continuation and abolition of extraordinary administrative and legal regimes, is found in science under the name "system of extraordinary legislation". The main normative legal acts of extraordinary legislation naturally include the laws of Ukraine "On the legal regime of emergency" and "Legal regime of martial law", "On the zone of emergency environmental situation." Some provisions of emergency legislation are also contained in the laws of Ukraine "On the Defense of Ukraine", "On Mobilization Preparation and Mobilization", "On Internal Troops of the Ministry of Internal Affairs of Ukraine", "On the Security Service of Ukraine", "On the State Border of Ukraine", "On Combating with terrorism "and others. Taken together, the mentioned normative legal acts in the legal literature are covered by the terms "extraordinary legislation", "acts of emergency legal regulation," etc.

The study of the world practice of the use of extraordinary legal regulators provides grounds for arguing that extraordinary legislation is a mandatory element of the legal systems of most countries of the world with any form of government. However, depending on the state-legal

[7] Про особливості державної політики із забезпечення державного суверенітету України на тимчасово окупованих територіях у Донецькій та Луганській областях : Закон України від 18 січ. 2018 р. № 2268-VIII. URL: https://zakon.rada.gov.ua/laws/show/2268-19 (дата звернення: 06.05.2019).

regime, extraordinary legal acts can occupy a different place in the system of national legislation[8].

In a democratic state, acts of extraordinary legislation do not replace the effect of the basic laws, but only limit them. They establish such legal rules, the purpose of which is to regulate the basic issues of state, administrative and socio-economic nature in extraordinary circumstances. The main purpose of emergency legislation is to ensure that all legitimate means for a civilized society to eliminate the cause or situation with the least social and material losses, and ultimately ensure the preservation of a democratic regime in an emergency[9]. In the conditions of the introduction of one or another extraordinary administrative-legal regime, restrictions on the rights and freedoms of citizens, as well as the imposition of additional duties on them[10]. Instead, it must be clearly understood that the restriction of certain rights of citizens by the state ensures the observance and protection of their fundamental rights in the event of an emergency.

A characteristic feature of the administrative-legal regimes is the allocation of state authorities with special powers of authority, which are manifested in additional rights and legal capabilities in order to counteract or terminate the negative actions of the subjects or to eliminate the consequences of various nature (natural, man-made, environmental, etc.) to ensure national security, protection of state interests from threats and negative influence of external and internal character[11].

In countries with authoritarian regimes, almost all legislation on issues of power, political regime, human rights and freedoms, as well as most of the criminal legislation, are of an extraordinary nature. This

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[8] Кузніченко С.О. Становлення та розвиток інституту надзвичайних адміністративно-правових режимів в Україні : дис. … доктора юрид. наук : 12.00.07 / Харківський національний університет внутрішніх справ. Сімферополь, 2010. С. 118–120.

[9] Зиборов О.В. Институт военного положения по российскому праву (историко-правовое исследование) : дисс. … канд. юрид. наук : 12.00.11 / Московская академия МВД Росии. Москва, 2002. С. 17.

[10] Шаповалова, І.О. Нормативно-правове забезпечення службово-бойової діяльності органів внутрішніх справ у надзвичайних ситуаціях техногенного і природного характеру : дис. … канд. юрид. наук : 21.07.05 / Кримський юрид. ін-т Одеського держ. ун-ту внутр. справ. Сімферополь, 2011. С. 30–47.

[11] Голуб В.О. Становлення та розвиток інституту адміністративно-правового режиму воєнного стану: дис. ... канд. юрид. наук : 12.00.07 / Ін-т законодавства Верховної Ради України. Київ, 2017. С. 25–26.

practice is typical for transitional regimes, which are formed as a result of the victory of radical opposition forces[12]. Among such regimes are their specific military, established as a result of military coups. Under these regimes, the constitution is suspended or its complete cancellation is announced, dissolution of representative institutions and democratic organizations is carried out, and the full power of the authorities in the center and on the ground belongs to the military command or officials appointed by them[13].

A prerequisite for effective action of extraordinary legislation is its prior development by the state in peacetime. Only in this case, the emergency legal regime will be applied as efficiently as possible, with the further elaboration of only specific measures in relation to the emergency situation that led to its introduction. If it is not premature to develop legal mechanisms for managing crisis situations (also of a military nature), it is difficult to expect clarity and coherence of actions of authorized entities in the conditions of a real crisis.

In scientific legal literature one can come to the conclusion that the adoption of legislative acts regulating the introduction of an extraordinary administrative-legal regime in peaceful times is inappropriate, since it can be perceived as a preparation for the collapse of democratic state-legal institutes or war and will cause anxiety in other states[14,15].

Based on the study of the historical experience of different states regarding the application of emergency law can identify a number of inherent features that characterize it as a legal instrument, designed to serve the interests of the nation and not to threaten its spiritual values:

1) extraordinary legislation is based on the constitution and generally accepted principles and norms of international law, which guarantee the soundness and legitimacy of the use of emergency measures;

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[12] Байтин М.И. О современном нормативном понимании права. 1999. *Журнал Российского права.* № 1. С. 101.

[13] Дубко Ю.В. Діяльність поліції тоталітарних, авторитарних та демократичних країн у надзвичайних умовах. 2009. *Право і суспільство.* № 2. С. 41–44.

[14] Федоров В.А. Правовой институт исключительного (военного и чрезвычайного) положения в Российской Федерации : дис. ... канд. юрид. наук : 20.02.03 / Моск. воен. ин-т. погран. службы РФ. Москва, 2003. С. 60–71.

[15] Пчелинцев, С.В. Правовое регулирование военного положения в Российской Федерации : дис. ... канд. юрид. наук : 20.02.03 / Военный Ун-т. Москва, 1998. С. 70–120.

2) the very existence of emergency legislation provides for the possibility of emerging in the life of society and the state of large-scale extreme situations of war, social, technological and natural character, which create a real and inevitable threat to the security of man, society and the state as a whole;

3) the objectives and tasks of extraordinary legislation are to prevent and eliminate the abovementioned social and natural disasters, to ensure the safety of citizens, to protect their rights and freedoms, the foundations of the constitutional system, the interests of society and the state, the restoration of the rule of law and order;

4) the application of the rules of extraordinary legislation leads to the redistribution of mutual rights and obligations of the citizen and the state – the extension of the powers of state authorities due to some restriction of the rights and freedoms of citizens[16];

5) the extraordinary situation that is the basis for the application of extraordinary legislation, provides for the creation of special authorities and management with specific tasks and functions, which concentrate significant powers to eliminate the emerging emergency[17];

6) emergency legislation is intended to legally establish the application of "emergency measures" within the framework of the imposed emergency administrative-legal regime of the exercise of state power (for example, the introduction of a curfew, the prohibition of strikes, mass events, etc.);

7) the existence in emergency legislation of only imperative norms that do not allow any deviation from its content, since any derogation from the provisions of emergency laws can lead to gross violations of law and, consequently, to the restriction of the rights, freedoms and legitimate interests of citizens who under conditions of emergency legislation become the most vulnerable[18].

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[16] Кузніченко С.О. Становлення та розвиток інституту надзвичайних адміністративно-правових режимів в Україні : дис. … доктора юрид. наук : 12.00.07 / Харківський національний університет внутрішніх справ. Сімферополь, 2010. С. 56, 69–70, 90–91.

[17] Кузніченко С.О. Адміністративно-правовий режим воєнного стану: монографія. Харків : Право, 2014. 232 с.

[18] Шаповалова І.О. Нормативно-правове забезпечення службово-бойової діяльності органів внутрішніх справ у надзвичайних ситуаціях техногенного і природного характеру : дис. … канд. юрид. наук : 21.07.05 / Кримський юрид. ін-т Одеського держ. ун-ту внутр. справ. Сімферополь, 2011. С. 19–21.

2. Legal Regulation of the Mod of War

According to Art. 1 of the Law of Ukraine "On the Legal Status of Military Status", a state of war is a special legal regime introduced in Ukraine or in its separate areas in the event of armed aggression or threat of attack, the danger of Ukraine's state independence, its territorial integrity and provides for the provision of appropriate state authorities , military command, military administrations and local self-government powers necessary to prevent the threat, rebuff armed aggression and ensure national security, eliminate threats and the danger of the state independence of Ukraine, its territorial integrity, as well as the temporary, threatened, restriction of the constitutional rights and freedoms of man and citizen and the rights and legitimate interests of legal entities, indicating the validity of these restrictions[19]. A similar, but literally not identical definition of this concept contains and paragraph 12 of Art. 1 of the Law of Ukraine "On the Defense of Ukraine"[20].

The concept of a "military state" is etymologically combined with war, a kind of socio-political and legal category, which encyclopedias are defined as "a complex socio-political phenomenon associated with the resolution of contradictions between states, peoples, national and social groups with the transition to application means of armed struggle that takes place in the form of fighting between their armed forces"[21].

From a legal point of view, the war has certain characteristics: a) a formal act of the announcement, as required by the IV Hague Convention of 1907; b) the dissolution of diplomatic relations between the belligerent states, which is the result of the declaration of war; c) annulment of bilateral agreements, especially political ones; d) a special legal regime, which characterizes partial restrictions on human rights, etc., begins.

The use of these particular features of the war against the ongoing armed conflicts brings us beyond the concept of "war" as military adversaries carry out military actions by combining militarily, quasi-militarily, diplomatic, informational, economic, and other means to achieve strategic political goals.

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[19] Про правовий режим воєнного стану : Закон України від 12 трав. 2015 р. № 389-VIII. URL: https://zakon.rada.gov.ua/laws/show/389-19 (дата звернення 02.05.2019).

[20] Про оборону України : Закон України від 6 груд. 1991 р. № 1932-XII. URL: https://zakon.rada.gov.ua/laws/show/1932-12 (дата звернення 03.05.2019).

[21] War. Encyclopedia Britannica. URL: https://www.britannica.com/topic/war (дата звернення: 06.05.2019).

Thus, the concept of war should be considered within the framework of an "armed conflict" (armed conflict), which involves two compulsory components – the presence of organized armed contingents and engagement in combat operations of a certain intensity[22].

Many legal acts dealing with issues of national security also use the term "special period"[23,24,25,26,27]. As to the term "wartime", it is appropriate to emphasize that it means the time of the administrative-legal regime of the military state, and is not a separate type of extraordinary administrative-legal regime, and has fallen into the legislation of Ukraine in the process of implementation of international normative legal acts ratified by the state[28].

Particular attention deserves the notion of "state of war", which is enshrined in the legislation of Ukraine, national laws of other states and international law. Encyclopedic literature defines the notion of "state of war" as "... the state of armed confrontation between states (blocs of states). Begining from the moment the official statement (notice or note) of the competent authority of the country regarding the commencement of hostilities against another state and the cessation of peaceful relations between them"[29] .

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[22] Final Report on the Meaning of Armed Conflict in International Law. The Hague Conference (2010). Use of Force. URL: http://www.ila-hq.org/download.cfm/docid/2176DC63-D268–4133–8989A664754F9F87 (дата звернення 03.05.2019).

[23] Про оборону України : Закон України від 6 груд. 1991 р. № 1932-XII. URL: https://zakon.rada.gov.ua/laws/show/1932-12 (дата звернення 03.05.2019).

[24]Про затвердження Положення про організацію готівкового обігу і ведення емісійно-касових операцій у банківській системі в особливий період : Постанова Правління Національного банку України від 05 трав. 2018 р. № 51. URL: https://zakon.rada.gov.ua/laws/show/v0051500-18 (дата звернення: 03.05.2019).

[25] Про положення про проходження військової служби відповідними категоріями військовослужбовців : Указ Президента України від 07 жовт. 2001 р. № 1053/2001. URL: http://zakon.rada.gov.ua/laws/show/1053/2001 (дата звернення 03.05.2019).

[26]Про функціонування єдиної транспортної системи України в особливий період : Закон України від 20 жовт. 1998 р. № 194-IV. URL: http://zakon.rada.gov.ua/laws/show/194-14 (дата звернення 03.05.2019).

[27] Про мобілізаційну підготовку та мобілізацію : Закон України від 21 жовт. 1993 р. № 3543-XII. URL: https://zakon.rada.gov.ua/laws/main/3543-12 (дата звернення 02.05.2019).

[28] Конвенція про захист цивільного населення під час війни, 1949 р.: міжнародний документ: Міжнародний документ ООН від 12 серп. 1949 р. № 995_154. URL: https://zakon.rada.gov.ua/laws/show/995_154 (дата звернення 03.05.2019).

[29] Юридична енциклопедія в 6 т. / голова редкол. Ю.С. Шемшученко. Київ: Укр. енциклоп., 1998. Т. 1: А–Г. С. 613.

Mobilization as a type of activity also has its legal regime. However, in our opinion, talking about mobilization as a separate extraordinary administrative-legal regime is incorrect. This also applies to evacuation as a set of measures for the organized removal (removal) of population from areas (places), zones of possible influence of the negative factor and its placement in safe areas (places) in case of a direct threat to life and causing harm to people's health[30].

Having systematized all approaches to defining the concept of "military state", as well as the main features of this administrative-legal regime. A detailed analysis of the development of legislation regulating the legal regime of martial law has made it possible to distinguish the following main features of this regime: state powers for the organization of defense, security and public order can be transferred to military command; the bodies of the military command are endowed with the powers of emergency, as well as the right to publish mandatory statutory acts (see paragraph 32, paragraph 4, of the Regulation on the Ministry of Defense of Ukraine, sub-items 10, 61 and 81, paragraph 4 of the Regulation on the General Staff of the Armed Forces of Ukraine, approved by the Decree of the President of Ukraine dated 06.04.2011 №406 / 2011[31]; on state bodies, enterprises, institutions, organizations (regardless of the form of ownership) and citizens are assigned additional defense responsibilities[32]; legal liability for certain offenses is increasing (see Article 5, Article 35 of the Code of Ukraine on Administrative Offenses[33], p. 11 part 1, Article 67, Part 3 of Article 402, Part 2, Article 403, part. 3 articles 404, part 4, article 407, etc. The Criminal Code of Ukraine[34].

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[30] Про затвердження Порядку проведення евакуації у разі загрози виникнення або виникнення надзвичайних ситуацій : Постанова Кабінету міністрів України від 30 жовт. 2013 р. № 814. URL: https://zakon.rada.gov.ua/laws/show/841-2013-п (дата звернення 02.05.2019).

[31] Про Положення про Міністерство оборони України та Положення про Генеральний штаб Збройних Сил України : Указ Президента України від 06 квітн. 2011 р. № 406/2011. URL: http://zakon.rada.gov.ua/laws/show/406/2011 (дата звернення 03.05.2019).

[32] Про затвердження Положення про військово-транспортний обов'язок : Постанова Кабінету Міністрів України від 28 лист. 2000 р. № 1921. URL: https://zakon.rada.gov.ua/laws/show/1921-2000-п (дата звернення 05.05.2019).

[33]Кодекс України про адміністративні правопорушення : Закон України від 07 груд. 1984 р. № № 8073-X. URL: https://zakon.rada.gov.ua/go/80731-10 (дата звернення 30.04.2019).

[34] Кримінальний кодекс України : Закон України від 05 квіт. 2001 р. № № 2341-III. URL: https://zakon.rada.gov.ua/laws/show/2341-14 (дата звернення 02.05.2019).

From the specified norms of tort law, it is seen that crimes committed in the conditions of a martial law, punishments for which, usually adequate to their social danger, are repressive. That is, as D.V. Bondarenko, the law of wartime involves not only increasing the criminal liability for crimes that constitute an increased public danger, but also a special procedure for the implementation of criminal-procedural relations, distinguished by simplified and accelerated procedures[35].

In the science of state law in Soviet times, the characteristic features of the military state were the presence of increased responsibility for the laws of war, advocating for non-compliance with the administrative acts (orders) of the military authorities, as well as the application to citizens of a number of restrictions on civil rights and the imposition of additional duties on them[36].

Thus, the legal regime of martial law as an extraordinary legal regulator covers a number of closely related elements of a legal nature.

It should be noted that the introduction of martial law is always accompanied by the introduction of a number of emergency measures that cannot be applied under normal conditions. In administrative-legal science, the idea like that measures are manifested in forms: the creation of special authorities; publication of special legal acts; the use of "reinforced measures" to protect public order and ensure public safety; if necessary – restricting the rights and freedoms of citizens, as well as expanding their responsibilities[37].

By systematizing approaches to the definition of the "administrative-legal regime of martial law", V.O. Holub distinguishes its main features, namely: the power to organize defense, security and public order can be transferred to the military command; the military commanders are endowed with powers of a special nature, as well as the right to publish mandatory statutory acts; state agencies, citizens, enterprises, institutions and organizations may rely on additional defense liabilities; there is a legal possibility of a temporary, threatened threat to

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[35] Бондаренко Д.В. Юридическая ответственность в условиях военного положения: на опыте Великой Отечественной войны 1941–1945 гг. : дисс. … канд. Юрид. Наук : 12.00.01 / Российская академия правосудия. Москва, 2005. С. 99–114.

[36] Румянцев О.Г. Додонов В.Н. Юридический энциклопедический словарь. Москва : Инфра-М, 1996. С. 43.

[37] Зиборов О.В. Институт военного положения по российскому праву (историко-правовое исследование) : дисс. … канд. юрид. наук : 12.00.11 / Московская академия МВД Росии. Москва, 2002. С. 30.

national security, restriction of constitutional rights and freedoms of man and citizen and the rights and legitimate interests of legal persons[38].

Political and legal features of the legal regime of a military or extraordinary state, as extraordinary legal regulators, are manifested in the following: 1) the transition of the supreme power in the state to the military administration, accompanied by either the dissolution of representative bodies, or the actual cessation of their activities; 2) significant expansion of the powers of the administrative apparatus and law enforcement agencies; 3) the cancellation or suspension of the basic constitutional rights of citizens or their restriction; 4) strengthening of criminal and administrative liability – increase of sanctions for one or another offense (also for violation of the extraordinary administrative-legal regime), the introduction of the death penalty or the extension of its use, the introduction of administrative link and deportation, the abolition of restrictions on the use of armed forces and police physical coercion measures; 5) extension of the range of compulsory state duties of the population, introduction of labor and transport, duties on civil defense, etc.; 6) the abolition or restriction of freedom of residence, movement, choice of profession; establishment of prohibited zones, areas of enhanced police control; the introduction of a permit system for the choice of place of residence and movement of the country; lock-in at work, forced labor movement, etc.; 7) significant restrictions on the institutions of freedom of property and treaties; the introduction of a permit system for the opening or reorganization of an enterprise, the use of raw materials and manpower; establishment of sales markets, systems of compulsory state orders; state-building of enterprises, carrying out of forced confiscations and audits; 8) standardization of civil circulation, establishment of prices for consumer goods, rent and other services; a decrease in wage and social security levels[39].

Based on the provisions of the Law of Ukraine "On the Legal Status of Military Status," the wording of the legal basis for the introduction of a military state should be based on the following legal categories: "armed aggression", "threat of attack", "danger of state independence",

[38] Голуб В.О. Становлення та розвиток інституту адміністративно-правового режиму воєнного стану : дис. ... канд. юрид. наук : 12.00.07 / Ін-т законодавства Верховної Ради України. Київ, 2017. С. 33.

[39] Чрезвычайное законодательство ФРГ / под ред. В.М. Чхиквадзе. Москва : Юрид. лит., 1970. С. 19–21.

"danger of territorial integrity" despite the fact that the Law itself does not provide definitions of these categories. The legal category "armed aggression" is defined by Article 1 of the Law of Ukraine "On Defense", which is:

- ✓ application by another state or group of armed forces against Ukraine. An armed aggression against Ukraine is any of the following:
- ✓ invasion or attack of the armed forces of another state or group of states on the territory of Ukraine, as well as the occupation or annexation of part of the territory of Ukraine;
- ✓ blockade of ports, coast or airspace, violation of Ukraine's communications by armed forces of another state or group of states;
- ✓ an attack of the armed forces of another state or group of states on military land, naval or air forces or civilian sea or air fleets of Ukraine;
- ✓ sending by or on behalf of another state armed groups of regular or irregular forces committing acts of armed force against Ukraine which are so serious that they are equally marked in paragraphs 5 to 7 of this article, including significant participation third state in such actions;
- ✓ the action of another State (s) that allows its territory which it has provided to a third State to be used by that third State (s) to commit the acts specified in paragraphs five to eighth of this article;
- ✓ application of units of the armed forces of another state or group of states that are in the territory of Ukraine in accordance with international treaties concluded with Ukraine against a third state or group of states; another violation of the conditions stipulated by such agreements or continuation of stay of these units on the territory of Ukraine after termination of action specified contracts[40].

The category "threat of attack" is not defined by any normative legal act. However, the Military Doctrine of Ukraine contains the wording "the threat of using military force" – the intentions or actions of one of the parties of military-political relations, which indicate willingness to use military force against the other party in order to achieve their own goals. The threat of the use of military force arises when the state takes measures for direct preparation for war[41].Such

[40] Про оборону України : Закон України від 6 груд. 1991 р. № 1932-XII. URL: https://zakon.rada.gov.ua/laws/show/1932-12 (дата звернення 03.05.2019).

[41] Левченко О.В. Уточнення понятійного апарату з питань оцінювання рівня воєнної загрози національній безпеці України. 2014. *Наука і оборона.* № 2. С. 18.

qualification as "the danger of the state independence of Ukraine" should be interpreted on the basis of its constituent "danger" – it is an objective phenomenon of the material world, processes, objects that are capable under certain conditions to cause damage to the subject as immediately, and in the future, that is, to cause undesirable consequences[42] and "state independence" – the supremacy of state power within the country, independence in international relations[43].

The dangers of territorial integrity include the facts of the existence in the state of armed conflicts of a non-international nature – so-called internal armed conflicts. Article 1 of the Additional Protocol to the Geneva Conventions of August 12, 1949, refers to all armed conflicts that are not subject to any armed conflict occurring on the territory of any State between its armed forces or other organized armed groups which, under responsible command, exercise such control over part of its territory that allows them to carry out continuous and coordinated hostilities and apply the provisions of Protocol II of the Geneva Conventions[44].

The Law of Ukraine "On the Fundamentals of National Security of Ukraine" defines sovereignty, territorial integrity and inviolability of objects of national security, and attacks on the sovereignty of Ukraine and its territorial integrity, territorial claims by other states – threats to national security – existing and potentially possible phenomena and factors that pose a threat to Ukraine's vital national interests. "In addition, the said Law defines[45].

The legal basis for the defense of the country as a system of political, economic, social, military, scientific, scientific, technical, informational, legal, organizational, other measures of the state regarding preparation for armed defense and its protection in the event of armed aggression or armed conflict is the Constitution of

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[42] Березюк О.В., Лемешев М.С. Безпека життєдіяльності: навч. посібник. Вінниця: Вінниц. нац. техн. ун-т., 2011. С. 28.

[43] Левин, Д.Б. Основные проблемы современного международного права / Под ред.. Гайдукова Д.А. Москва : Госюриздат, 1958. С. 200.

[44] Додатковий протокол до Женевських конвенцій від 12.08.1949, що стосується захисту жертв збройних конфліктів не міжнародного характеру : Протокол II від 08 черв. 1977 р. URL: http://zakon1.rada.gov.ua/laws/show/995_200 (дата звернення 05.05.2019).

[45] Про основи національної безпеки України : Закон України від 21 черв. 2018 р. № 2469 – VIII. URL: http://zakon.rada.gov.ua/laws/show/-2469-19 (дата звернення 02.05.2019).

Ukraine[46], the Law of Ukraine "On the Defense of Ukraine"[47], other legislative acts of Ukraine and relevant international agreements, the consent of which is binding on the Verkhovna Rada of Ukraine.

Thus, the Law of Ukraine "On Defense of Ukraine" defines the principles of its defense, as well as the powers of state authorities, the main functions and tasks of the bodies of military management, local state administrations, local self-government bodies, the responsibilities of enterprises, institutions, organizations, officials, law and responsibilities of Ukrainian citizens in the field of defense[48]. In particular, it was established that the defense of the country is based on the willingness and ability of state authorities, all parts of the military organization of Ukraine, local self-government, a unified civil defense system, the national economy to transfer, if necessary, from peaceful to military status and repression of armed aggression, liquidation armed conflict, as well as readiness of the population and the territory of the state for defense.

Specificity of legal relations related to the implementation of legal norms governing the legal regime of martial law, determines the totality of regulatory legal means, which in a martial law acquire a completely new meaning. In particular, the unique, other extraordinary legal regimes, include the introduction of an institution of military administrations that may be formed in the territories in which the state of war was introduced and the provision of the right to take measures of the legal regime of the military state to the military command, to which the law refers the General Staff The Armed Forces of Ukraine, the Joint Operational Headquarters of the Armed Forces of Ukraine, the command of the Armed Forces of Ukraine, the command of the Special Forces Special Forces of the Armed Forces of Ukraine, the command of Airborne Assault the Army of the Armed Forces of Ukraine, the command of the operational commands, the command of the unions and military units of the Armed Forces of Ukraine[49].

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[46] Конституція України : Закон України від 28 черв. 1996 р. № 254к/96-ВР. URL: http://zakon.rada.gov.ua/laws/show/254к/96-ВР (дата звернення: 03.05.2019).

[47] Про оборону України: Закон України від 6 груд. 1991 р. № 1932-XII. URL: https://zakon.rada.gov.ua/laws/show/1932-12 (дата звернення 03.05.2019).

[48] Ibidem.

[49] Про правовий режим воєнного стану : Закон України від 12 трав. 2015 р. № 389-VIII. URL: https://zakon.rada.gov.ua/laws/show/389-19 (дата звернення 03.05.2019).

CONCLUSIONS

Thus, summing up, we note that the legal regime of martial law must be a system of interconnected and complementary legal norms regulating: the grounds for its introduction; the activities of the entities authorized to enter, abolish and implement appropriate measures; the procedure for its introduction; the operation of the legal regime of the military state in time, space and in the circle of persons; a mechanism for limiting the rights and freedoms of citizens, as well as responsibilities that are relied on by legal entities and individuals. In our view, only in the case of such detailed regulation, the institution of martial law will have a constitutional character and signs of legitimacy.

The legal regulation of the military state regime is characterized by the use of a number of evaluative and abstract concepts such as "military threat", "threat of aggression", and others. Such legal formulas are inherent in the regulation of a very wide range of social relations. Legal application under the legal regime of a martial law is carried out with a wide range of freedom of discretion, which may lead to a lack of uniformity in the interpretation and application of extraordinary legal norms.

The presence of gaps in the law on a military state is due to the impossibility of forecasting all possible situations in the field of social relations that arise in the context of martial law. This necessitates the use of law enforcement in the provision of a military state to be guided not only by the legal rules deriving from the laws and acts of international law, but also the basic principles of law.

At the legislative level, it is necessary to balance the proportionality of the restriction of rights and freedoms by determining the amount of forces and means necessary to reject aggression or attack, depending on the level and extent of the military conflict.

SUMMARY

In the article the author investigates the legal regime of martial law in the system of domestic emergency administrative legal regulators and the legal grounds for its introduction.

On the basis of studying the historical experience of different states regarding the application of extraordinary legislation, defines a number of inherent features that characterize it as a legal instrument designed to serve the interests of the nation and not to threaten its spiritual values,

and also distinguishes the features of the war from a legal point of view. Emphasizes the political and legal features of the legal regime of a military or extraordinary state, as extraordinary legal regulators. Stresses that the legal regulation of the military state regime is characterized by the use of a number of evaluative and abstract concepts, in particular such as "military threat" and "threat of aggression".

On the basis of the analysis of normative legal acts, the author states that the existence of gaps in the law on the military state is due to the impossibility of forecasting all possible situations in the sphere of social relations that arise in the conditions of a martial law. This necessitates the use of law enforcement in the provision of a military state to be guided not only by the legal rules deriving from the laws and acts of international law, but also the basic principles of law.

It is considered necessary at the legislative level to balance the proportionality of the restriction of rights and freedoms by determining the amount of forces and means necessary to reject aggression or attack, depending on the level and extent of the military conflict.

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THE ISSUES OF QUALIFICATION AND LEGAL PROCEEDINGS OF ILLIGAL ACTIONS AIMED AT NON-DECLARATION OF GOODS, VEHICLES MOVING THROUGH THE CUSTOMS BORDER OF UKRAINE

Lipynskyi V. V.

INTRODUCTION

Systematic study of foreign trade operations and determination of their expediency, control of routes of movement of goods and vehicles, strengthening control over the implementation of foreign trade operations with certain highly liquid goods on a permanent basis is carried out by the State Fiscal Service of Ukraine (hereinafter – SFS). It should be noted that according to the Resolution of the Cabinet of Ministers of Ukraine dated from December 18, 2018, № 1200 "On Establishment of the State Tax Service of Ukraine and the State Customs Service of Ukraine", the State Fiscal Service of Ukraine is being reorganized by dividing it into two services: State Tax Service of Ukraine and the State Customs Service of Ukraine; newly created services are the central bodies of the executive power for ensuring the implementation of state policy in the tax and customs area (respectively); the direction and coordination of the services will be implemented by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine; the services are the successors to the rights and responsibilities of the reorganized SFS in their respective fields of activity.[1] On March 6, 2019, the Cabinet of Ministers of Ukraine approved Resolution № 227 "On Approval of the Regulations on the State Tax Service of Ukraine and the State Customs Service of Ukraine".

The analysis of exposed attempts of illegal movement of goods and minimization of taxes during their import it was revealed a systemic

[1] Про утворення державної податкової служби України та державної митної служби України: Постанова Кабінету Міністрів України від 18 грудня 2018 р. № 1200 / Кабінет Міністрів України. URL: http://zakon.rada.gov.ua/laws/show/1200-2018-%D0%BF (дата звернення: 04.04.2019).

problem related to the presence in the territory of Ukraine of goods, vehicles, customs clearance of which was not carried out, due to which the state budget did not receive proper customs payments in full. One of the reasons of this situation in the domestic market of imported goods is the using by dishonest subjects of foreign economic activity gaps in the current legislation and committing unlawful actions aimed at not declaring goods and vehicles[2].

During the 12 months of 2018, the Customs of the State Customs Service detected 48.9 thousand violations of customs rules with the value of offenses amounting to 3.4 billion UAH. Compared to the corresponding period of the previous year, the number of drawn up protocols on violation of customs rules increased by 51%, and the value of the offense was halved. In 5.4 thousand cases of violation of customs rules offenses It was temporarily seized subjects of offenses for the amount of 914 million UAH. The amount of temporarily seized offenses increased by 24%. The most common are cases of illegal movement across the customs border of manufactured goods. During the specified period, for the commission of such violations it was seized the goods in the amount of 568.6 million hryvnia. Vehicles were withdrawn in the amount of UAH 149.9 million, foodstuffs – by UAH 119.3 million, currencies – UAH 76 million. 39.2 thousand cases of violation of customs rules were considered by the Customs of the State Customs Service, which is 81% more than for the same period of 2017. 6.2 thousand cases of violation of customs rules in the amount of 2.5 billion UAH were submitted to the court by the customs. As a result of litigation of cases of violation of customs rules, the court decided to impose fines and confiscation in the amount of UAH 483.8 million.

One of the effective methods of counteracting the customs offense is cooperation and exchange of information with the competent authorities of foreign countries in the framework of mutual administrative assistance, which ensures the prevention and detection of illegal export-import transactions and the fact of non-payment of the obligatory customs payments to the budget. According to the results of international cooperation, over 712 cases of violation of customs rules

[2] Ліпинський В.В. Проблемні питання кваліфікації протиправних дій, спрямованих на недекларування товарів, транспортних засобів, що переміщуються через митний кордон України. *Правова позиція.* 2017. № 1 (18). С. 44.

amounting to UAH 686.5 million were initiated in the 12 months of 2018. In addition, non-payment of over UAH 21.2 million of compulsory customs payments was established in the course of international cooperation. 208 materials of the received responses were submitted to the territorial units of the State Customs Service for establishing the presence of signs of criminal offenses and carrying out control and verification measures. According to the results of materials processing, 29 criminal proceedings have already been initiated by the territorial units of the State Fiscal Service[3].

1. The Issues of Qualification of Actions Aimed at Non-Declaration of Goods, Vehicles Moving Across the Customs Border of Ukraine

The concept of "violation of customs rules" is contained in Art. 458 of Customs Code of Ukraine (hereinafter – CCU). According to this article Customs offense means an administrative offense that is unlawful, wrongful (deliberate or inadvertent) acts or omissions that impinge on the procedure laid down in this Code and other legislative acts of Ukraine for movement of goods, means of transport for commercial use across the customs border of Ukraine, their presentation to the revenue and duties authorities for customs supervision and customs clearance, as well as handling of goods that are placed under customs control or for whose control the revenue and duties authorities are responsible under this Code or other laws of Ukraine, and for which this Code provides for administrative liability[4].

Set of elements of an offense includes signs characterizing the external act of a person's behavior, its orientation, consequences, and signs characterizing the offender himself and his mental attitude to the crime. The signs of the Set of elements of an offense are combined into four groups (elements) that characterize: the object of violation of customs rules, the objective side of violation of customs rules, the subject of violation of customs rules, the mental element of violation of

[3] Інформація щодо стану боротьби з митними правопорушеннями упродовж 2018 року Державної фіскальної служби України. Київ, 2019. URL: http://sfs.gov.ua/media-tsentr/novini/365795.html (дата звернення: 04.04.2019).

[4] Митний кодекс України: Закон України від 13 березня 2012 р. № 4495-VI / Верховна Рада України. URL: http://zakon.rada.gov.ua/laws/show/4495-17 (дата звернення: 04.04.2019).

customs rules. All these elements of customs rules offense constitute an inextricable unity. The presence of these elements is necessary to qualify a specific act as a violation of customs rules.

The object of violation of customs rules are public relations that arise in the field of public administration, are protected by the legislation that establishes customs rules, and which causes damage in the case of customs offenses. According to paragraph 28 of Art. 4 CCU 'Customs rules' means the rules, established by the Code and other legislative acts of Ukraine, that apply to the movement of goods and means of transport for commercial use across the customs border of Ukraine, their presentation to the revenue and duties authorities for customs control and customs clearance as well as to the processing of operations with goods that are placed under customs control or assigned to the revenue and duties authorities by the Code and other laws of Ukraine for supervision.

According to Art. 257, 266 CCU the declarant is obliged to declare the goods, that is, to declare in the prescribed form accurate information about the goods, the purpose of their movement, as well as information necessary for the carrying out their customs control and customs clearance.

Responsibility for the non-declaration of goods, commercial vehicles moving across the customs border of Ukraine, i.e. non-declaration on the established form of accurate and authentic information (presence, name or title, quantity, etc.) of goods, commercial vehicles subject to obligatory declaration in case of moving across the customs border of Ukraine, provided for by Art. 472 of CCU. Sanction of Art. 472 CCU provides for the imposition of a fine of 100 percent of the value of these goods, vehicles with the confiscation of these goods, vehicles.

Therefore, the object of this offense is the procedure established by the CCU for declaring goods, vehicles transported through the customs border of Ukraine.

The objective side of violations of customs rules is the set of statutory features that characterize the outward manifestation of an act that infringes on the objects of legal protection, as well as the objective conditions of that encroachment. The objective side of the offense under Art. 472 of the CCU, is the failure to declare in the prescribed form accurate and reliable information (presence, name or name, quantity, etc.) of goods, vehicles subject to obligatory declaration in case of their movement across the customs border of Ukraine.

Non-declaration of goods, vehicles transported across the customs border of Ukraine is the failure to declare, in the established form, accurate information about goods and vehicles, as well as information necessary for their customs control and customs clearance.

According to item 3.5 of the Procedure of filling in customs declarations on the form of the single administrative document approved by the order of the Ministry of Finance of Ukraine on 30.05.2012 № 651, registered at the Ministry of Justice of Ukraine on 14.08.2012 under № 1372/21684 (hereinafter – the Procedure) the necessity to fill in a certain information field of the customs declaration by the declarant shall be determined in accordance with the rules for filling in the information fields given in Chapter II of this Procedure, on the basis of the direction of movement, the customs regime chosen, the presence or absence of a description of this information field in the relevant Chapter II of this Procedure and the existence of reservations in the text of the description of this information field. Customs authorities are not allowed to establish the procedure for filling in the information fields of the customs declaration and to determine the peculiarities of filling it in other way than those which are specified in the Procedure, as well as to make requirements to the declarant on filling in to the customs declaration information not provided for by the Procedure.

It should be noted that providing documents containing false information about the name of the goods, their weight (taking into account allowable losses under appropriate storage and transportation conditions) or the quantity, country of origin, consignor and/or recipient, quantity packages, their markings and numbers, false information necessary to determine the product code according to UKT FEA and its customs value as a basis for the movement of goods to the body of income and fees is the basis for considering the of the presence of signs of violation of customs rules, provided for by Art. 483 CCU.

In accordance with Art. 257 CCU declaration is carried out by declaring in the prescribed form (written, oral, by taking action) accurate information about the goods, the purpose of their movement across the customs border of Ukraine, as well as information necessary for the implementation of their customs control and customs clearance. When using the written declaration form, both electronic documents and paper documents can be used.

The conditions and procedure for declaring, the list of information required for customs control and customs clearance are determined by the CCU. The regulations on customs declarations and the forms of these declarations are approved by the Cabinet of Ministers of Ukraine, and the procedure for filling out such declarations and other documents used in the customs clearance of goods, commercial vehicles is approved by the central executive body, which ensures the formation and implementation of state tax and customs policies.

The Decree of the Cabinet of Ministers of Ukraine from May 21, 2012 № 450 approved the Regulation on Customs Declarations (hereinafter – the Regulations), which defines the requirements for the registration and use of customs declarations, on the basis of which goods transported (shipped) across the customs border of Ukraine by enterprises, and other goods declared in accordance with the legislation of Ukraine by submission of the customs declaration provided for the enterprises, as well as the procedure for amending the customs declarations, revoking them and declaring them invalid.

Goods are declared by providing to the customs authority:

– customs declaration on the form of the single administrative document;

– -or M-16 customs declaration;

– or a written application in accordance with Annex 1 to the Regulations;

– or a customs declaration for the written declaration of goods moving across the customs border of Ukraine by citizens for personal, family and other needs not related to the pursuit of business;

– or other document that may be used instead of a customs declaration in accordance with the law.

When moving (forwarding) goods across the customs border of Ukraine by citizens, the customs declaration on the form of a single administrative document shall be filled in cases when such goods are declared in accordance with the Customs Code of Ukraine and the Regulation with the submission of the customs declaration stipulated by the legislation of Ukraine for enterprises, as well as for declaration of goods (including personal use transport vehicles) imported into the customs territory of Ukraine and subject to official registration in accordance with the law.

In particular, citizens are allowed to import vehicles of personal use for transit through the customs territory of Ukraine, subject to their written declaration in the manner prescribed for citizens, and depositing into the account of the authority revenue and fees, having commited the passage of such vehicles to the customs territory of Ukraine, a cash deposit in the amount of customs payments which must be payed when importing such vehicles into the customs territory of Ukraine for the purpose of free circulation. These requirements do not apply to vehicles permanently registered with the relevant registration authorities of a foreign state, which is confirmed by the relevant document[5].

Standard customs declaration shall mean a customs declaration containing the particulars (data), sufficient to complete the customs clearance of goods and means of transport for commercial use under the customs procedure for which they were declared.

Advance customs declaration (other document that can be used instead of the customsdeclaration under Article 94 of the Code) shall be filed prior to importation of goods, meansof transport for commercial use (including for transit) to Ukraine or after their importation if they are in the territory of the Ukrainian border checkpoint.

Advance customs declaration shall be filed by the declarant or the person authorised by him to the revenue and duties authority, in whose operation area the goods, means of transport for commercial use are presented to customs clearance, for the purposes of conducting risk analysis and accelerating the customs formalities. When filing an advance customs declaration, the liability of the declarant or the person authorised by him for the accuracy of information contained in that declaration shall occur after:

(1) release of goods, means of transport for commercial use under the declared customs procedure without presenting them to the revenue and duties authority processing such declaration, or

(2) release of goods, means of transport for commercial use under the declared customs procedure after the presentation to the revenue and duties authority processing such advance customs declaration, but without customs examination by that revenue and duties authority, or

[5] Ліпинський В.В. Правові аспекти кваліфікації дій, пов’язаних із користуванням чи розпорядженням транспортними засобами особистого користування, ввезеними на митну територію України в митному режимі "транзит”. *Правова позиція.* 2016. № 1 (16). С. 70.

(3) notification to the declarant, or person authorised by him, by the revenue and duties authority processing such advance customs declaration of customs examination of the presented goods, means of transport for commercial use.

If the declarant or the person authorised by him does not have accurate particulars about the characteristics of the goods needed to fill in standard customs declaration, he may file a temporary customs declaration for the following goods to the revenue and duties authority, provided that it contains information sufficient for placing them for the declared customs procedure and under obligation to file an additional declaration within 45 days from the date of processing of temporary customs declaration (Part 1 of Art. 260 CCU).

In case of providing temporary or periodic customs declaration, the declarant or the person authorised by him shall, during the period established in accordance with the Code, file to the revenue and duties authority an additional declaration, which contains accurate particulars about goods declared under cover of any previous temporary or periodic customs declaration, which would have been filed under cover of a standard customs declaration. Goods moved across the customs border of Ukraine shall be declared to the revenue and duties authority, responsible for customs clearance of those goods.

Upon acceptance of the customs declaration by the revenue and duties authority it shall be a document that certifies the facts of legal significance, and the declarant or the person authorised by him shall be held liable for indicating false information in that declaration. In case of violation of customs rules regarding goods, means of transport for commercial use declared in the customs declaration, amendment, revocation and invalidation of that declaration until the end of proceedings in appropriate cases shall be prohibited. Proceedings in cases of violation of customs rules shall not be initiated, where the declarant or the person authorised by him independently applied to the revenue and duties authority to amend the customs declaration in the following cases:

– Amendments to the customs declaration accepted by the revenue and duties authority shall be allowed until the completion of customs clearance of goods and means of transport for commercial use under the declared customs procedure and within three years from the date of completion of customs clearance. Amendments shall relate

only to goods, means of transport for commercial use specified in the customs declaration.

– If, after the release of goods for free circulation, the customs supervision of which was carried without customs examination, the declarant has identified goods moved across the customs border of Ukraine and not specified in the customs declaration, at the written request of the declarant and with the authorisation of the revenue and duties authority amendment shall be made to the customs declaration on the increase in the number of goods released for free circulation in the customs territory of Ukraine in connection with the identification of undeclared goods.

– 4. Amendments to the customs declaration that affect the application of tariff and/or nontariff regulation of foreign economic activity to the goods shall be provided that such regulation is observed.

Subjects of administrative liability for customs offenses provided for in Art. 472 of CCU may be citizens who at the time of the offense have attained 16 years of age, and corporate officials in case of customs offenses by the entities. However, these categories enter into relations with the customs when declaring goods, vehicles for commercial purposes. ‘Declarant’ means the person making the customs declaration in his/her own name or the person in whose name a customs declaration is made.

Declarants may be:

(1) a resident who entered into the agreement or oh whose behalf it ientered into in the case of movement of goods, means of transport for commercial use across the customs border of Ukraine or change of the customs procedure for goods based on foreign trade agreement entered into by a resident;

(2) a person who under the laws of Ukraine is entitled to perform legally significant action on his behalf in relation to goods, means of transport for commercial use in other cases.

Entities may be declarants, provided that they are registered with the revenue and duties authorities of Ukraine.

The person authorised to declare goods, means of transport for commercial use on behalf of the declarant shall have the same duties, rights and bear the same liability as the declarant.

The subjective side of violations of customs rules is characterized by the mental attitude of a person to commit an offense:

1) guilt – a person's mental attitude to a committed action or inaction and its consequences, expressed in the form of intent or negligence;

2) motive – the internal motivation of a person who created the psychological prerequisites for committing an offense;

3) purpose – a consequence that the person seeks to achieve when committing an offense.

The offense under Art. 472 of CCU, may be committed intentionally or by negligence.

2. Some Issues of Legal Proceeding of Customs Rules Violation Cases, Established on the Grounds of Art. 472 of the Customs Code of Ukraine

According to an Art. 472 of CCU failure to declare goods, means of transport for commercial use moved across the customs border of Ukraine, i.e. failure to declare, in the prescribed form, accurate and authentic information (availability, name or title, quantity, etc.) of goods, means of transport for commercial use subject to mandatory declaration when moved across the customs border of Ukraine.

Penal clause of the Art. 472 of CCU provides for entailing a fine amounting to 100 per cent of the cost of such goods, means of transport with their confiscation. According to the Part 3 of Art. 465 CCU confiscation of goods, means of transport referred to in paragraph 3 of Article 461 of this Code shall apply regardless of whether those goods and means of transport are owned by the offender.

For example, a Ukrainian citizen Mr. M. returned to Ukraine from Italy, where he was in private affairs. The "red channel" was chosen as the form of customs control. The citizen filled out a customs declaration stating the vehicle, foreign currency and the availability of personal belongings in the amount of 55 colli. In oral questioning, the citizen confirmed the information specified in the customs declaration and denied the presence of any other goods, including those subject to obligatory declaration or movement which is prohibited or restricted through the customs border of Ukraine.

When carrying out customs control of the vehicle, in addition to the personal items declared by him, undeclared goods estimated by the

amount more than 54 thousand UAH were discovered. Based on this fact, Zakarpattya Customs drew up a protocol on violation of customs rules for the specified person on the grounds of an offense under Art. 472 of CCU.

In his written explanations, the citizen explained that he had transported undeclared goods to Ukraine at the request of an unfamiliar Italian citizen. In the future, the offender was supposed to send the goods by mail to the address indicated on the packages of goods, he did not intend to violate customs legislation.

By the decision of the Uzhgorod Inter-districtCourt of the Zakarpattya Region in the case of violation of the customs rules of a citizen of Ukraine, Mr.M. was found guilty of violating the customs rules provided for in Article 472 of CCU, an administrative penalty was imposed in the form of a fine of 100% of the cost of goods with their confiscation.

Part 2 of Art. 467 of CCU defined that if the cases of customs offenses in accordance with Article 522 of the Code are dealt with by the courts (judges), administrative penalty for customs offenses may be imposed not later than three six from the date of the offense, and if the courts (judges) deal with the cases of continuing customs offenses, including those provided for in Articles 469, 477–485 of the Code, not later than six months from the date when those offenses were discovered.

Continuing offenses are misconduct associated with a long, continuous failure to fulfill obligations stipulated by a legal norm. Such offenses are terminated either by the performance of established duties, or by bringing the perpetrator to justice.

Offenses are recognized as continuing, which, starting with any illegal action or inaction, are then carried out continuously by default. The initial moment of such an act may be an active action or inaction, when the guilty person either does not perform a specific duty assigned to her, or performs it not completely or incorrectly.

Stipulated by an Art. 472 TCU violation of customs rules, consists in the non-declaration of goods, commercial vehicles that move across the customs border of Ukraine, characterized by a one-time action at a certain time.

Thus, this violation of customs regulations cannot be considered ongoing, it is terminated with the submission of a declaration to the

customs authority, and therefore, an administrative penalty can be imposed no later than six months from the date of its commission.

For example, the Galytsky District Court of Lviv city issued a ruling in the case of violation of customs regulations. According to this decision, "... after hearing a representative of the Lviv Customs, having examined the case file, the court concluded that Mrs.G.'s actions contained signs of an offense under Art. 472 of CCU, however, the proceedings are subject to termination on the following grounds.

The court found that according to the protocol on violation of customs rules, made on September 25.09.2014, Mrs.G.'s administrative offense was committed on September 25.09.2014, and the case files came with a six-month expiration – September 02.09. 2015.

Mrs. G.'s guilt in committing the offense under Art. 472 of the CCU, is confirmed by the protocol on violation of customs rules, customs declaration, the act of carrying out inspection (reinspection) of goods, vehicles, hand luggage and luggage.

This administrative offense is not continuous and more than six months have passed since its commission. Consequently, the deadline for the imposition of an administrative penalty has expired; in this regard, the proceedings in the case must be closed".

According to the Part 1 Art. 268 of CCU Mistakes in the customs declaration that did not result in improper relief from customs duties or their reduced amount, failure to comply with tariff and/or non-tariff regulation of foreign economic activity shall not entail penalties stipulated by this Code and other legislative acts of Ukraine, save as provided for in Section 3 of this Article (i.e. if a person regularly (more than twice a month) makes mistakes in the customs declaration mentioned in Section 1 of this Article (except spelling mistakes), the revenue and duties authority shall apply to such person the penalties stipulated by this Code and other legislative acts of Ukraine).

For example, considering a case of violation of customs rules Kovpakivsky District Court of Sumy city established: "With the customs declaration attached to the case file dated 08/28/2015, completed personally by Sh., It is seen that in paragraph 3.1 he indicated 33,100 US dollars. Although in reality he imported into Ukraine 63,000 US dollars and 8,000 hryvnias. Thus, he did not indicate USD 29,900 and UAH 8,000 in the declaration.

Objecting to the administrative protocol, both Sh. and his defense attorney noted that in this case there was an error in the customs declaration, relieved Sh. of liability for this violation of customs rules, because this error did not cause any harm to the state of Ukraine and this error leads to of unlawful exemption from customs payments or a reduction in their size, sinceArt.268 of CCU provides for mistakes in the customs declaration that did not result in improper relief from customs duties or their reduced amount, failure to comply with tariff and/or non-tariff regulation of foreign economic activity shall not entail penalties stipulated by this Code and other legislative acts of Ukraine, save as provided for in Section 3 of this Article.

However, this position is erroneous, based on the following:

So, Art. 472 of CCU provides liability for failure to declare goods, means of transport for commercial use moved across the customs border of Ukraine, i.e. failure to declare, in the prescribed form, accurate and authentic information (availability, name or title, quantity, etc.) of goods, means of transport for commercial use subject to mandatory declaration when moved across the customs border of Ukraine.

That is, the indicated norm of the law provides for a formal composition of an administrative offense, and not material in the form of the onset of any negative consequences or damage to the state.

According to a Part 8 of Art.264 of CCU Upon acceptance of the customs declaration by the revenue and duties authority it shall be a document that certifies the facts of legal significance, and the declarant or the person authorised by him shall be held liable for indicating false information in that declaration".

CONCLUSIONS

Summarizing the above, it can be stated that upon detection of the fact of non-declaration on the established form of accurate and reliable information (presence, name or name, number, etc.) of goods, commercial vehicles, which are subject to obligatory declaration in case of movement across the customs border of Ukraine, there is an offense under Art. 472 of CCU.

During the legal proceeding of cases of violation of customs rules instituted under Art. 472 CCU, the court takes into account the quality of proceedings in the case of violation of customs rules, namely:

1) timely, comprehensive, complete and objective clarification of the circumstances of each case;

2) its decision in compliance with the requirements of the law;

3) ensuring the execution of the decision;

4) identification of the causes and conditions conducive to committing violations of customs rules;

5) the prevention of such offenses.

Timeliness implies compliance with the procedural deadlines: deadline for imposing administrative penalties; terms of consideration of the case; terms of consideration of the case

The circumstance obliges the body or official to investigate all the facts and circumstances of the violation of customs rules relevant to the resolution of the case.

The completeness of the clarification of the circumstances of each case is achieved through the use of all procedural actions. When resolving disputes in claims for decisions, actions or inaction of subjects of authority in the provision of administrative services, the courts, in accordance with the Part 3 of Article 2 of the Code of Administrative Proceedings of Ukraine, must check whether they are accepted (committed): 1) on the basis, within the powers and in the manner determined by the Constitution and laws of Ukraine; 2) using the authority for the purpose with which that power was conferred; 3) substantiated, that is, taking into account all the circumstances that are relevant for the decision (action); 4) impartial (impartial); 5) in good faith; 6) judiciously; 7) respecting the principle of equality before the law, preventing all forms of discrimination; 8) in proportion, in particular, with respect to the necessary balance between any adverse effects on the rights, freedoms and interests of the person and the purposes to which this decision is directed (action); 9) taking into account the right of a person to participate in the decision-making process; 10) in a timely manner, ie within a reasonable time[6].

Objectivity is achieved due to an impartial attitude to facts and circumstances, clarified during production, and an impartial attitude

[6] Легеза Є.О. Деякі аспекти оскарження результатів надання публічних послуг в судовому порядку. *Науковий вісник Херсонського державного університету. Серія «Юридичні науки».* 2016. № 1. Т. 3. С. 11.

towards a person is brought to administrative responsibility for violation of customs rules.

The proceedings on cases of violation of customs rules should be carried out on the basis of strict compliance with the law. When considering a case on violation of customs rules, the body (official) is required to ascertain whether an administrative offense was committed, whether the person is guilty of its commission, whether it is subject to administrative liability, whether there are circumstances mitigating and/or aggravating liability, are there any grounds for exemption of the person who committed the offense from administrative responsibility, as well as to find out other circumstances relevant to the proper resolution of the case.

It should be noted that the revenue and duty bodies participate in the implementation of the decision, not only in cases when it is issued by this body, but also at the stage of the proceedings, when officials have the right to temporarily seize goods, commercial vehicles and documents, and appoint expert examinations etc.

The assignment to identify the causes and conditions conducive to committing violations of customs rules is to comply with the provisions of Art. 282 of the Code of Administrative Offenses of Ukraine, which stipulates that the body (official) considering the case, having established the reasons and conditions that contributed to the commission of an administrative offense, makes proposals to the relevant state body or local government body, public organization or official to take measures to eliminate these reasons and conditions. It is must be notified about the measures taken within a month from the date of receipt of the proposal to the body (official) that made the proposal.

For solving the problem of the non-declaration of goods, vehicles moving across the customs border of Ukraine, it is beneficial to organize an operational exchange of information between the SFSU and the State Border Service of Ukraine as well as the customs administrations of foreign countries.

SUMMARY

A systematic study of foreign economic operations and determining their appropriateness, tracking the routes of movement of goods and vehicles, strengthening control over foreign economic operations with

certain highly liquid goods on an ongoing basis is carried out by the State Fiscal Service of Ukraine.

Based on the analysis of convicted attempts to illegally movement goods and minimize taxes when importing them, a systemic problem was discovered related to the presence in the trade in Ukraine of goods, vehicles which were not customs cleared, due to which the state budget did not receive in full the proper customs payments.

One of the reasons for this situation in the domestic market of imported goods is the use by unscrupulous entities of foreign economic activity, gaps in the current legislation and the commission of illegal actions aimed at the non-declaration of goods and vehicles.

Given the above, the issues of qualification and judicial proceedings of illegal actions aimed at the non-declaration of goods, vehicles moving across the customs border of Ukraine were examined and analyzed. Based on the analysis, the corresponding conclusions are made and suggestions are given.

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CORPORATE LAW IN THE HIGHLIGHT OF DIVISION OF PRIVATE AND PUBLIC LAW

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INTRODUCTION

An important instrument of state influence on economic relations are the rules of law as an element of the mechanism of legal regulation of these relations[1]. The rules of law are made up of certain systems, which in the theory of law are called as subinstitutions, institutes, sub-branches and branches. Their legal interaction is important both for a single legal regulation and for study. Furthermore, it is important to determine the place of corporate law in the system of law of Ukraine, in particular in order to identify its features, methods and principles. Many scientists tried to find the ratio of corporate law on the field of public or private law. Nevertheless, often the methods and the underlying principles of the discussion have different backgrounds, and therefore do not give answers to the most important theoretical and practical questions.

Realizing that there is a public and private interest in corporations, it is probably not possible today to support the method chosen by many scholars for the full identification of civil law with the private[2], and other branches of law – with the public law. Such a vision of the theory of law was called normative, according to which private law (the rules governing private-law relations) are all legal norms contained in the civil code of a particular state as the only codified act of private law and other civil law laws. The rest of the rules of law and relations that they regulate should be considered public[3].

[1] Беляневич О. А. Господарське договірне право України (теоретичні аспекти). Київ : Юрінком Інтер, 2006. С. 173.

[2] Сібільов М. Предмети приватного (цивільного) права. *Право України.* 2014. № 6. С. 66–74.

[3] Банчук О. Підстави розмежування публічного та приватного права в Україні. *Публічне право.* 2011. № 1. С. 144.

1. Private and Public Law Issues in the Moder Era

Such an interpretation is simply a theory of division of private and public law. However, such an interpretation is simply a theory of division of private and public law. In particular, O. Bunchuk has counted more than a dozen main theories of such a distinction, starting with Savigny's classical theory of interest, which has recently been subjected to serious criticism because of the multifaceted nature of the interest category and its criteria[4]. For example, minority shareholders, may be public – important to the state because of its social nature and tension, and private – the interest of the minorities themselves as individuals.

Same norms of law cannot be an integral part of various institutes and branches of law. However, this should not be accepted in full measure. If we consider the law as an objectively existing category, then the legal norm may regulate relations in various fields. For example, the sale of a significant stake in a joint stock company is an integral part of corporate and competition law. If we do not recognize the "tangible" complex industries, then we can talk about the division of the law in the industry in the Soviet sense. In this case, all private norms will be civilian, and the rest will belong to the public law branches.

However, as A. O. Belyanevich rightly points out, the development of the issues of private and public law takes place on the basis of a well-established understanding of the system of law developed in Soviet jurisprudence. An apparent exaggeration is the assertion that private and public law in all developed legal systems still exist as two separate areas of legal regulation, as two different types of legal influence on social relations, despite the fact that the developed right only exists and can exist in the presence of two spheres of public and private law[5].

The unity in the understanding of many representatives of the science of civil law regarding the division of private and public law in ancient Rome was rightly questioned by O. A. Belyanevich, which proved how different approaches to such a division in the most quoted by modern researchers Digest Ulpian and Institutions Guy[6].

In this context French scholars should be mentioned in the field of diminishing the role of private and public law. Their research shows that

[4] Банчук О. Вказана праця. С. 143–146.
[5] Беляневич О. А. Вказана праця. С. 83–84.
[6] Беляневич О. А. Вказана праця. С. 84–86.

terms of private and public law were borrowed by Rome from the laws of Hammurabi, which derive from criminal law, and is connected with the honor of the gods and the organization of punishment of private individuals for crossing the boundaries of the sacral citadel[7]. From the foregoing it is seen that solving the modern issue by methods dated back more than two thousand years is quiet useless process.

In developing a theory of public interest in economic societies, O. M. Vinnik gives a vision of the French professor M. Planiole concerning the division of the right to public and private. In his opinion, private law regulates the activity that private individuals carry out on their own behalf and in their own interests. This opinion was shared by the prominent pre-revolutionary Russian civilist and commercialist G. F. Shershenevich, believing that the sphere of private law is defined by the following categories: "1) private individuals as subjects of relations; 2) private interest as a substance of relations ". Public law, as noted by M. Planoliol, "regulates the relations of persons acting in the general interest, by virtue of direct or indirect delegation of sovereign power", and its motto is "to ensure the harmony and consent of society, balance of interests of the individual, collectives, communities in society as a whole, stability of the state and its institutions, stability of the fundamentals of economic and social development"[8].

Scientists have noticed for a long time the fact that a number of civil norms are distinguished in the system of civil law. Therefore Petrazhitsky believed that "in the field of private law unions, which arise on a voluntary basis between legal entities, the norms of civil law by their nature to a large extent receive a special color, which distinguishes them among the mass of civil norms and gives them a certain We traits inherent in most of public law norms"[9]. One can say that for more than a hundred years these norms have become even brighter public-law color.

In the context of the issue of dividing the law into public and private it should be said that many scientists rightly emphasize that the

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[7] Gaudemet Y. Editorial. *Revue de Droit Association Henri Capitant pour la Culture Juridique Française*. 2012. № 5. URL: http://www.henricapitantlawreview.fr/edito_revue.php?id=48&lateral=48.

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division of the right to private and public is paramount for determining the type, methodology of legal regulation. N the same time the divsion does not correspond to the practical needs of the isolation of legal norms[10] and the need to explain separation of regulation complex legal relations.

European researchers of private law state that, despite the clarity of division into public and private, Ulpian's works lacked the criteria and grounds for such a division. In particular, in Digest, the abstract, modern look, the words of the praetor about a public river, which cannot be transmitted, are given[11]. This abstract sharpening of the delineation of the right to public and private may have served some practical needs of the law of Ancient Rome. If we take into account that the modern classical corporation did not exist in that historical time, it is difficult to apply such an abstract vision of two thousand years ago to find out the place of modern corporate law.

At the end of the nineteenth century Sokolovsky noted that, trying to find in the classical Roman law the origins of almost all phenomena of modern economic and legal life, many authors often consider the Roman institutions themselves from the standpoint of modern concepts, created only later, due to special conditions of life of the middle and new eyelids[12].

In addition, the private law of Roman lawyers was used not only in symbiosis with the public, but also in other means – private law as a Roman right, national, and the right of the nation[13]. Therefore, it is impossible to reach a final opinion on the nature of private and public law, taking into account only the works of one Ulpian. In our opinion, in Roman law there was no unity either in terms of their delimitation or in relation to their place in the system of law. On the other hand, the division of the right to private and public has a modern interest in the category of interest and the possibility of different regulation of any processes within a single branch or institution.

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[10] Беляневич О. А. Вказана праця. С. 83.

[11] Watson A. The Evolution of Western Private Law. JHU Press, 2001. P. 146.

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[13] Митюков К. А. Курси римського права. Римське право в Університеті Святого Володимира: у 2 кн. Київ : Либідь, 2010. Кн. 1. С. 12.

2. Place of Corporate Law in Legal System

For civil law the vision that the rules of public and private law are intertwined only in normative acts, and not in the branches of law[14] is a compromise. For example, the process of creating a corporation is regulated by the rules of public law, since the state, having understood the complexity of private and public interest, establishes mandatory rules for registration. In addition, the creation of corporations takes place with the participation of state bodies, and if you turn to joint stock companies, this order is more imperatively settled. The same applies to the termination of corporations, and even to a greater extent. Thus, we cannot consider the rules governing the establishment of a corporation as private, and, therefore, they are out of civil law regulation on the subject.

In our opinion, the assertion that the participants always have a choice as to how they behave in the corporation, and the corporation does not issue any binding orders[15], is not entirely correct. First, both the majority and the minority have the opportunity to mutually influence and conquer the will of the participants. For example, according to Part 1 of Art. 64 of the Ukrainian Joint-stock Company Act, a participant of a limited liability company that does not systematically perform or improperly performs duties or impedes its actions to the achievement of the objectives of the partnership may be excluded from the partnership on the basis of a decision voted by the participants owning in aggregate more than 50% of the total number of votes of the members of the partnership. System analysis of this norm gives grounds for the conclusion that in fact it is a question of depriving a participant of his property – shares in the authorized capital. And, therefore, it is seen the explicit subordination of his interests to the interests of the corporation.

Secondly, corporate relations are not limited to the corporation-participants, they go beyond these narrow frameworks, as we repeatedly emphasized. Thirdly, there are such corporate legal relationships, for

[14] Варул П. Место корпоративного прав в правовой системе. *Гражданское право и корпоративные отношения* : материалы международной научно-практической конференции, посвящ. 90-летию видного казахстанского ученого-цивилиста Басина Ю. Г., г. Алматы, 13–14 мая 2013 г. Алматы : Курсив, 2013. С. 109.

[15] Спасибо-Фатєєва І. Вчення про корпоративні праві і цивілістична доктрина. *Право України.* 2014. № 6. С. 88.

example, between a holding company and a dependent (corporate) enterprise, where the relationship of dependence-control is obvious[16].

Consequently, the main issue to be resolved in the course of legal regulation of economic relations is the establishment of not the one in which the boundary between the private interests of economic entities and public interests is laid down, but the one by means of which the legal instrument of economic law can ensure the consistency of interests of the sub- objects of management and society as a whole[17]. If it is determined that private and public law form a vertical rather than a horizontal structure, then it will be obvious that private law and public law permeate all branches of law. Consequently, in the context of the division of the right to public and private, one should not refer to the sectoral division, but to the nature of the rules of law. Such an interpretation will make it possible to solve not only the theoretical issues of division of law into private and public, and actually depart from this approach, but also many other theoretical and practical issues.

We believe that private and public law in corporate relations serve as a methodological task for regulating corporate relations through the interaction of public and private interests, rather than its assignment to private or public law. In this context Shcherbyna notes that the opposition of public and private interests in the state regulation of the economy by legal means is inadmissible, since it is by way of streamlining the public-legal regulation of private legal relations that it is possible to achieve an optimal balance of public and private interests[18].

In view of the above, it is worth pointing out the opinion of the Polish scientist Cornelius that public and private law are two elements of the legal system, isolated according to a horizontal corporation, according to which separation of separate branches of law is carried out[19]. This allows to divide the law not on the basis of private and public elements, but using the above objective process of sectoral and

[16] Лукач І. В. Правове становище холдингових компаній. Київ : Юрінком Інтер, 2008. С. 97–92.

[17] Беляневич О. А. Вказана праця. С. 349.

[18] Щербина В. С. Публічні й приватні інтереси в господарських відносинах. *Приватне право і підприємництво.* 2014. Вип. 13. С. 30.

[19] Kornelius B. The topicality of the law division into public law and private. *SLGR.* 2011. № 39 (26). P. 91.

functional specialization. This is confirmed by the system of modern German economic law, which will be discussed further.

There is no historical interpretation of the idea that the idea of economic law and the adoption of a business (business) code is conceptually based on the idea of economic law, which for the first time became widely disseminated in the pages of European legal literature at the beginning of the XX century. The justification of this concept is, in particular, the book by J. Gödemann "Fortschritte des Zivilrechts im XIX Jahrhundert", published in 1910. Among the articles of this author, published in Russian translation in 1924 in Kharkiv, also is the article "Basic features of economic law»[20].

We consider it necessary to consider the historical process of formation of economic law not in isolation from the European, but in its context, taking into account the realities of the Soviet era (especially the threats to economic law scholars after the notorious meeting on the questions of Soviet state and law in 1938 under the direction of the main theorist Soviet law).

First there was a trade law in Europe, which the Soviet science of economic law tried to adapt to the features of the command and administrative system, since trade law was automatically recognized as "bourgeois" and could not exist in the USSR. For centuries, the isolation of the entire USSR right in European law (including under the influence of the Anglo-Saxon system of law), there have been significant changes. Those concepts and processes that were the subject of discussions of the scientists of pre-revolutionary Russia, have undergone significant changes.

In this regard, Kulagin noted that the development of the economic function of the state, the expansion of its business activities, various restrictions on the right of private property and freedom of contract – all the phenomena inherent in the Western economy in the second half of the XX century – excessively complicated and without the complicated issue for Western jurisprudence is the delimitation of public and private law. Various theories of law, which claimed to adequately reflect these changes in the social and economic life of the West, including the theory of "legal socialism", the theory of social functions, the bourgeois concept of economic law, or generally rejected the division of the right

[20] Майданик Р. Право України: дуалізм і система. *Приватне право*. 2013. № 1. С. 34.

to public and private, or emphasized the futility this division in terms of general systematization of law, as did the founder of normative law school Kelsen. In turn, the active penetration of public foundations into the sphere of civil law, especially evident during the First World War, led to the emergence of bourgeois constructions of economic law[21]. Note that in the cited quotation under the economic law, Kulagin, obviously, meant economic law, which is one of the branches of the law of the modern German legal system.

Before turning to the contemporary German legal system, it is worth emphasizing that there is no unity in understanding the doctrinal level. It is well known that the Civil Code and the Commercial Code are in parallel in Germany, and some scholars regard trade law as private, which, together with the rules of civil law, is an economic private law[22]. Other researchers point out that in the Commercial Provision, there are only a few extractives to the Civil Code[23]. As Protsenko rightly points out, even those scholars who recognize the commercial law as part of a civilian must necessarily state that this is a special civil law[24] (not to be confused with a special part of civil law, which is part of the general civil law of Germany).

At the same time, in the scientific discussion in Germany, there is another vision of the possibility of state interference with private law[25]. And here there clearly is the issueof the dissimilarity of the conceptual apparatus of the legislation of Ukraine and Germany. Public law in Germany is traditionally understood as Öffentliches, which can be translated as "public law". Its norms also regulate economic relations, and economic law is an integral part of it. At the same time, commercial private law includes the rules of commercial law, company law and only subsidiary and civil law. However, studies of recent years show a direct impact of the rules of public law on the right of societies, and, therefore,

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[21] Кулагин М. И. Предпринимательство и право: опыт Запада. Москва, 1992. С. 5–6.

[22] Meyer J. Wirtschafts-privachtrecht. Eine Einfürung. Springer-Verlag, Berlin Heidelberg, 2002. P. 6

[23] Boemke B., Ulrici B. BGB Allgemeiner Teil. Springer : 2009. P. 17.

[24] Проценко И. Признаки торгового права Германии как особенной отрасли частного права. *Закон и жизнь*. 2013. № 8–4. С. 219.

[25] Seewald O. Wirtschaftsverwaltungsrecht. URL: http://www.jura.uni-passau.de/fileadmin/dateien/fakultaeten/jura/lehrstuehle/seewald/skript_wirtschaftsverwaltungsrecht_07_seewald.pdf.

on the state regulation of the law of societies[26]. In fact, this corresponds to the notion of commercial law as a complex branch of law in Ukraine.

For France, the distinction between public and private law is also very important, as evidenced at least by the fact that the Revue de Droit Association's Henri Capitant française has been devoted to public and private law. French scholars are asking this question: what is today a sign of the original construction of legal dualism? She became a paradox. On the one hand, the limits of public law are expanding along with the development of European law, especially in the economy, due to the fact that it is the main vector in the implementation of EU legislation in domestic law. At the same time, the administrative system has quite successfully manifested itself in this direction.

On the other hand, due largely to the effect of EU law and the Convention for the Protection of Human Rights and Fundamental Freedoms, in private and public law, important foundations have been found, the process of approximation which is currently ongoing. This contributed to the complementarity and cooperation in public and private law relations, which manifested itself at once in several areas. It is through the synthesis of differences and cooperation that public and private law are currently being revealed[27].

Given the above, one may not agree with the fact that the GK "is based on the philosophy that proceeds from the possibility of combining private legal and public-law principles into a new unified quality of legal regulation of so-called economic relations. Such a world has not seen. "[28] The preservation of the autonomy of trade law fully corresponds to the tendency of modern law to a differentiated regulation of homogeneous social relations, depending on their subjective composition. Also controversial is the thesis about the unlawfulness of the establishment in the Civil Code of a separate from the Central Committee of the legal regulation of such basic institutions of private law as subjects, property and contract rights, etc[29].

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[26] Seewald O. Wirtschaftsverwaltungsrecht. Вказана праця. P. 16.

[27] Gaudemet Y. Вказана праця.

[28] Довгерт А. С. Система приватного права та структура проекту нового цивільного кодексу України. Кодифікація приватного (цивільного) права. К., 2000. С. 4.

[29] Довгерт А. С. Сучасні приватноправові реформи в Україні з огляду на формування всесвітньоцивільного права : Доповідь на академічних читаннях АПрН України 17 березня 2009 р. К., 2009. Вип. 12. С. 20.

However, the structure of the trade codes of Germany and France proves the opposite – both acts determine the subjects of trade law, trade commitments, contracts, etc. The fact that the GK contains more public or restrictive norms is quite logical given the transition of the Ukrainian economy from the administrative-command to the market. In addition, all trade codes of the countries of Europe, the Model Trade Code of the USA and the Commercial Code of Japan define such concepts as "merchant", "commercial obligations" and "commercial" agreements. This refutes the above-mentioned thesis on the uniqueness of the Civil Code in the context of legal regulation of such basic institutions of private law as subjects, property and contract law.

Moreover, the structure of the German Law On Joint Stock Companies indicates the existence of explicitly public norms in this document. In particular, Book 3 regulates punishment and fines, which lays down rules on civil, criminal and administrative liability. Concerning the connection of this Law with the Civil and Commercial Codes, the figures say for themselves: the Civil Code is specified in the Law 9 times, and about Commercial – 82.

In the context of the division of the right to private and public it is also advisable to refer to the experience of the Anglo-Saxon countries. One can not entirely agree with the assertion that in the countries of Anglo-American law the division of public and private law is not applied, although we undoubtedly support the fact that in these countries the law is not divided into the industry in the traditional sense, but forms separate sections (the right of companies , purchase and sale right, etc.). English lawyers are actively discussing private and public law at various levels: competition law, public contract rights, company law rights, consumer rights protection, transport law, etc. It is about diffusion of public and private law[30]. We believe that in English law, the vertical characterization of private and public law is best shown when it comes not to uniform regulation of private and public laws, but of specialization. As for American law, it should be recalled that, as in English law, there is no division of law in the industry, as well as codes. However, there is the Model Trade Code in the United States, but there is no Model Civil Code.

[30] Freedland M., Auby J.-B. The Public Law. Private Law Divide: Une entente assez cordiale. Bloomsbury Publishing, 2006. P. 93–254.

Taking into account the coexistence of public and private norms in symbiosis and counterbalance in most of the economic laws that have manifestation in the public and private interests thoroughly investigated by Vinnik, we consider that today it is expedient to consider the division of the right to public and private not through the prism of laws, which are increasingly based on a special sectoral principle, but through the rule of law. So public and private law have the character of horizontal rules of law. Thus, the combination of a single law of private and public law is the most obvious manifestation in corporate laws.

Now let's turn to the definition of corporate law in the legal system. In science, different views on the place of this sub-branch of law are expressed depending on different criteria. In order not to duplicate the research of the notion of corporate legal relations, we only note that consideration of the concept of corporate legal relations, which is the subject of corporate law, is devoted to subsection 2.1 of this work. Most research on the concept of "corporate law" focuses on defining the content of corporate legal relationships. Instead, we are particularly interested in the allocation of corporate law in the system of law of Ukraine.

It is methodologically important to determine the direction of our study of the place of corporate law in the system of law, in particular, sectoral affiliation and systemic. With regard to the sectoral affiliation of corporate law, there are two approaches within which there is a misunderstanding. According to the first approach, corporate law is a component of civil law.

Taking into account the above, we will develop the opinion of Poedinok: only with the help of the economic-legal concept, which provides for the complex application of private law and public-law elements of regulation of economic relations in order to ensure a balance of private and public interests in the field of management[31], one can explain the phenomenon of separate systems economic law, in our case – corporate law. The unity of the subject of legal regulation makes it possible to speak of the emergence of a complex field of law. The presence of the subject of a complex branch of law determines the

[31] Поєдинок В. В. Правове регулювання інвестиційної діяльності: теоретичні проблеми. Ніжин : Аспект-Поліграф, 2013. С. 123.

availability of the method, the complexity of the subject also determines the complex nature of the method[32].

Searches for the system component of the definition of corporate law provide grounds for considering corporate law as an institution, a system of norms, an independent industry and a sub-sector. Traditionally, in the science of Soviet law, the basis for the division of law in the industry was the subject and method[33]. However, researchers of the theory of law recently rightly point out that for the allocation of its branches is not enough to use the criterion of unity of the subject and method of legal regulation, especially with respect to new branches of law. Complex branches combine both public law institutes and private law[34].

Note that even in Soviet times, it was about integrated institutions and sub-sectors of law. In particular, Polenina[35] wrote about the affinity of the institutions formed on the brink of various branches of law, for example, civil, family and labor. The scholar noted the formation of new branches of law through the development of such adjacent institutes, stressing that it is difficult to precisely determine exactly when they become an independent branch of law and that, obviously, this criterion also has an appropriate legislative framework.

Regarding corporate law, the uniform subject of regulation is obvious – corporate relations. This gives grounds for asserting that corporate law rules are not merely a set, but also interact with one another. Therefore, we do not agree that corporate law is a system of norms, which is formed from different institutions of civil law, since its subject is a homogeneous, fully regulated relationship.

As regards the consideration of corporate law as a system of norms, the following should be emphasized. Consequently, corporate law actually "borrows" the rules from various institutions of civil law, for example, the general part, obligatory, contractual, without forming its

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[32] Самарходжаев Б. Б. Понятие корпоративного права и его место в системе права. *Гражданское право и корпоративные отношения* : материалы международной научно-практической конференции, посвящ. 90-летию видного казахстанского ученого-цивилиста Басина Ю. Г., г. Алматы, 13–14 мая 2013 г. Алматы : Курсив, 2013. С. 133.

[33] Алексеев С. С. Теория государства и права. Москва : Юрид. лит-ра, 1985. С. 278–280.

[34] Мінка Т. П. Правовий режим як критерій поділу права на галузі. *Часопис Київського університету права.* 2003. № 3. С. 18–21.

[35] Поленина С. В. Комплексные правовые институты и становление новых отраслей права. *Правоведение.* 1975. № 3. С. 71–79.

own system. However, our study of the structure of corporate relations shows the specifics of subjects, objects and content of corporate legal relations. In addition, the author's attention remains corporate management as one of the objects of corporate relations.

A number of scientists, mainly representatives of civil law science, consider corporate law as an institution. In their opinion, corporate norms are formed only within the civil law. The Institute of Law is a set of normative regulations of the field of law, expressing the content of interdependent legal norms governing a particular group (type) of social relations, as well as social relations or their elements[36]. The analysis of theoretical studies regarding the allocation of sub-areas of law allows us to conclude that the sub-sector must have certain common characteristics of the institutes that it integrates. In particular, according to O.A. Galeti, the domain of law is always not just a set of related legal institutes, but also a result of the specialization of legal influence, and this specialization is objective-subjective, that is, covers both the objective needs of society, so and inquiries and intentions of legal practice[37].

In addition to uniting homogeneous corporate norms, corporate law also has a second component in the field of law, since in society there is an objective need for the study and unified regulation of corporate relations, which manifests itself in the role of corporations in society, as well as CSR, as discussed above. The requirements of legal practice are evident, as evidenced by systematic clarifications of the highest judicial bodies on corporate law issues. Thus, we believe that corporate law is a subregistry of economic law and of a complex nature, since it does not have homogeneous regulation, it is regulated not only within the framework of purely corporate institutions, for example, corporate governance and the implementation of corporate rights, competition law, labor and even family (on the rules of criminal law in the German Law "On Joint Stock Companies" mentioned above).

O. R. Kibenko defines corporate law as a complex inter-branch legal institution, the rules of which regulate private law and public-law relations, which are formed in connection with the creation,

[36] Галета О. А. Підгалузь права як категорія сучасної загальнотеоретичної юриспруденції. *Порівняльно-аналітичне право*. 2014. № 5. С. 15.

[37] Галета О. А. Вказана праця. – С. 16.

activity and liquidation of economic partnerships[38]. Agreeing with the fact that the rules of corporate law regulate both private law and public-legal relations, we do not share opinion on corporate law as an interbranch institute. The fact is that corporate law is much larger than it is enough for an institution, besides, only in its system corporate law forms two institutions – corporate governance and the exercise of corporate rights.

However, even individual representatives of civil law science drew attention to the fact that the regulation of corporate relations does not fit into the subject of such subjects of civil law as property and liability law. Corporate law is a subcontract of economic law, therefore we do not support the thesis that this sub-sector consists of a system of norms and other sources regulating corporate relations that arise in the process of creation and activity and termination of corporate enterprises (corporations)[39]. In particular, it is unclear what the scientist is referring to when speaking of other sources, since the rule of law may not exist beyond the source of law, which is its objective external appearance.

This point of view is controversial, based on the formal definition of legal regulation. Depending on the nature of the objective requirements of the economic basis, the content of legal regulation is: a) streamlining and consolidating the dominant social relations, and b) promoting the development of new social relations[40]. So even if the rules of corporate law have historically gone out of business, then over the last century they have become clear legal (become part of the charters) and even legislative consolidation. Therefore, it's worth talking about corporate law as a system of law, reflected in sources of law.

It is worth adding that in the corporate law tightly combined methods of economic law – the method of power regulations (the procedure for the creation of business partnerships), autonomous decisions (corporate governance) and recommendations (model statutes)[41]. At the same time, the corporate law did not work with its own

[38] Кибенко Е. Р. Корпоративное право Украины. Х. : Эспада, 2001. С. 33–36.

[39] Прилуцький Р. Б. Про поняття корпоративного права та його місце у системі права України. *Часопис Академії адвокатури України.* 2013. № 2. С. 9.

[40] Алексеев С. С. Механизм правового регулирования в социалистическом государстве. Москва : Юрид. лит., 1966. С. 10.

[41] Пронська Г. В. Вибране. Київ : Освіта України, 2013. С. 502–503.

method. Thus, corporate law is a sub-sector of commercial law regulating corporate relations, that is, relations on the implementation of corporate rights and corporate governance.

Shcherbyna, considering the subject of legal regulation, which is economic relations, defines the basic principles of economic law. These principles are also inherent in corporate law, in particular:

– optimal combination of market self-regulation of economic relations of economic entities and state regulation of macroeconomic processes (the state seeks to grant freedom of corporate rights and corporate governance in accordance with the requirements of the legislation);

– economic diversity (corporations operate in different spheres of the economy, which also depends on their legal status, for example, banks, insurance companies, etc.);

– recognition of all subjects of property rights equal before the law, prevention of unlawful deprivation of property (all shareholders and participants have equal basic corporate rights, but the amount of these rights may vary depending on the participation of a person in the authorized capital);

– Providing the state with protection of the rights of all subjects of ownership and economic activity (the state ensures the rights of minority participants, in particular their right to convene extraordinary meetings, the right to information on the activities of the company, the sale of shares in case of disagreement, etc.);

– the right of everyone to entrepreneurial activity, the prevention of abuse of a monopoly position on the market, unjustified restriction of competition and unfair competition (corporate law is particularly related to competition, in particular, regarding economic concentration);

– social orientation of the economy (CSR).

The literature covered the issue of own principles of corporate law. For example, Garagonich highlights the following principles of corporate governance (which we consider an institute as a sub-branch of corporate law): the principle of subordination of the majority of minorities; the principle of dependence of the degree of influence of a participant on the management of a corporate enterprise on the size (share) of its contribution to the capital of a corporate enterprise; the principle of general management and control of the participants (members) of the corporate enterprise by its activities; the principle of

centralization of management and the delineation of the competence of the corporate enterprise; the principle of the possibility of involving non-members (members) in the management of a corporate enterprise[42].

These principles can be considered as principles of corporate governance, which are more economic than practical value. However, they cannot be recognized as the principles of corporate law. In particular, the principle of subordination of the majority of minority, defined as the main principle of building any corporate system, which establishes the differences between classical civil contractual relations, built on equality, autonomy and freedom of expression of the parties, and corporate relations – as a kind of economic relations in which decisive does not become the will of a particular individual, but the will of the majority[43].

This principle is rather controversial and cannot be realized in all corporate relations. Yes, sometimes a minority is also endowed with rights, the exercise of which forces most to obey its will. For example, in accordance with clause 4 of Part 1 of Art. 47 of the Law of Ukraine On Joint Stock Companies, extraordinary general meetings of a joint stock company are convened by the supervisory board at the request of shareholders (shareholder), which, on the date of filing a claim, collectively hold 10 or more percent of ordinary shares of the company. In this case, the majority at least formally submits to the minority, since extraordinary meetings are at least convened, if not conducted because of the absence of a quorum.

The corporation operates the principle of the superiority of the interests of the corporation over the interests of its participants. However, this principle is not always implemented even in the economy. In particular, if there is a will of the participants, they can eliminate the corporation, in which case their interests will dominate the interests of the corporation itself. In this aspect, it is worth recalling the combination of public and private interests as a dichotomous and multidimensional phenomenon.

[42] Гарагонич О. В. Поняття та принципи корпоративного управління. Порівняльно-аналітичне право. 2013. № 3-2. С. 156–157.

[43] Гарагонич О. В. Вказана праця. С. 156.

CONCLUSIONS

Thus, corporate law is a part of economic law, its subject is corporate relations, it also uses the methods of economic law. Corporate law inherents in both the general principles of commercial law and its own. That is precisely why we believe that it is necessary to refer to the legal principles inherent in corporate law and derivatives from general economic ones. In addition, the principles of corporate law are significantly influenced by the principles of corporate governance and the theory of CSR. Based on the above, one can define the following basic principles of corporate law:

– combination of private and public interests, which we partially analyzed in this unit and thoroughly investigated;

– maximizing the profit of the corporation (we substantiated the economic and legal importance of this principle in the previous section);

– proportionality of the participant's contribution to the authorized capital of the amount of participation rights in the corporation;

– corporate social responsibility;

– compliance with corporate law requirements of EU company law;

– basic corporate rights to participate in the management of a company and to obtain corporation profits from each member of the company (in particular, the right to participate in general meetings, the right to information on the company's activities and the right to dividends);

– effective corporate governance taking into account the interests of both the majority and the minority (although this principle is largely declarative and rather economic, but it should be based on the system of corporate governance, namely, the distribution of functions between corporate governance and control bodies);

– the control of participants in the activities of the corporation (for example, in accordance with Part 2, Article 58 of the Law of Ukraine On Joint Stock Companies, the executive body of a joint stock company is accountable to the general meeting and the supervisory board, organizes the execution of their decisions. The executive body acts on behalf of the joint-stock company within the limits, established by the company's charter and by law).

SUMMARY

The article deals modern issues of corporate law in the highlight of division of private and public law. Particular attention is paid to the study of division of private and public law in the modern era. The up-to-date classical corporation did not exist in the Roman era, that is why it is difficult to apply such an abstract vision of two thousand years ago to find out the place of modern corporate law. It was concluded that private and public law in corporate relations serve as a methodological task for regulating corporate relations through the interaction of public and private interests, rather than its assignment to private or public law. Corporate law is a part of economic law, its subject is corporate relations, it also uses the methods of economic law. Corporate law inherents in both the general principles of commercial law and its own. That is precisely why we believe that it is necessary to refer to the legal principles inherent in corporate law and derivatives from general economic ones.

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9. Митюков К. А. Курси римського права. Римське право в Університеті Святого Володимира: у 2 кн. Київ : Либідь, 2010. Кн. 1. С. 12.

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26. Алексеев С. С. Теория государства и права. Москва : Юрид. лит-ра, 1985.

27. Мінка Т. П. Правовий режим як критерій поділу права на галузі. *Часопис Київського університету права.* 2003. № 3. С. 18–21.

28. Поленина С. В. Комплексные правовые институты и становление новых отраслей права. *Правоведение.* 1975. № 3. С. 71–79.

29. Галета О. А. Підгалузь права як категорія сучасної загальнотеоретичної юриспруденції. *Порівняльно-аналітичне право.* 2014. № 5. С. 15, 16.

30. Кибенко Е. Р. Корпоративное право Украины. Х. : Эспада, 2001.

31. Прилуцький Р. Б. Про поняття корпоративного права та його місце у системі права України. *Часопис Академії адвокатури України.* 2013. № 2. С. 9.

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33. Пронська Г. В. Вибране. Київ : Освіта України, 2013.

34. Гарагонич О. В. Поняття та принципи корпоративного управління. Порівняльно-аналітичне право. 2013. № 3–2.

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STATE POLICY IN THE FIELD OF SCIENCE AS INSTITUTE OF SCIENTIFIC LAW OF UKRAINE

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INTRODUCTION

Problem's setting. The proclamation of independence, the formation of a civil society, the change of economic conditions of the economy management, the ideology of the development of market relations in Ukraine – all of those things set new challenges for the authorities regarding public administration in the field of science. In terms of the globalization challenges, the forms of science organization, historically, can not remain unchanged, so there is an urgent need for the transformation of state policy because of the transition from exclusively state science to the creation of new mechanisms of public administration, sources of funding and organization of scientific activities. Besides, due to the complication of the public administration object, where market elements appeared, it is necessary to develop effective mechanisms that would ensure the development of science and at the same time create conditions for improving its economic and social efficiency.

At the present stage of the global community development we can finally say that the Ukrainian state has entered a new stage of national development, characterized by new relationships which require appropriate legal regulation. Changes in public life could not touch relations that arise in the field of science, which brought ideas about necessity to form a new branch of law – a scientific law.

Analysis of recent research and publications. Various theoretical substantiation of state policy in the field of science in general and in Ukraine in particular can be found in the scientific works of such famous scholars as: A. Abdulov, A. Azizov, V. Arutiunov, A. Bezborodov, O. Vahanov, H. Volkov, L. Hokhberh, N. Hordieieva, D. Hvishiani, A. Hudkova, O. Dynkin, H. Dobrov, S. Zdioruk, H. Kalytych, D. Karkavin, K. Korzhavin, V. Kremen, B. Liebin, B. Malitskyi, L. Mindeli, R. Melnyk, S. Mykulynskyi, O. Popovych, K. Popper, V. Rasudovskyi, A. Sokolov and others.

Previously unsolved problems. Recently, the Ukrainian state has been actively involved in creating elements of the market innovation system and adapting science as its most important element to new political, social and economic conditions. However, the actions of the public administration agencies in this area were not always systematic and consistent. As a result, new and old forms of organization of science both exist in parallel, and come into conflict to some extent. A number of areas of public administration of science does not have adequate human resources, information and analytical, financial support.

The foregoing requires the need to form a complete and perfect concept of state policy in the field of science in Ukraine and to determine the key determinants of its effectiveness.

Main part. The question of the legal nature of scientific law is very complex and in many ways contradictory. Today, as far as the mentioned area of law scholars express very different views on its place in the system of domestic law which basically comes to the fact that the scientific law is a complex branch of law[1]. Expressing personal attitude to the mentioned above point of view, we assert that it is not possible to accept it.

Paying detailed consideration to this aspect we should quote R. Melnyk who is in his turn emphisizes, the theoretical and practical inappropriate use of the concept of "complex area of law", which only complicates the understanding of the national legal system, causing problems in law – making and law enforcement[2].

Today, unfortunately, we have to admit that juris dictionis not always focused on the needs of law enforcement, which in particular is unlikely to be satisfied with the term "complex area of law" in the legal dispute, in this case, involving research subjects activity, as judges must clearly understand the legal nature of legal disputes, which, of course,

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[1] Мельников И.И. Структура законодательства о науке как отрасли права. М.: Изд. Гос. Думы, 2002. 264 с.; Законодательство о науке: Современное состояние и перспективы развития / Отв. Р. Лапаева В.В. М.: Норма , 2009. 400 с.; Національна інноваційна система України: проблеми формування та реалізації / Упоряд. Андрощук Г.О., Шевченко М.М.. К.: Парламентське вид-во, 2007. 304 с.; Селіванов А.О. Наука і закон: Перший досвід системного аналізу законодавства у сфері науки і науково-технічної діяльності К.: Логос, 2003. 262 с.

[2] Мельник Р.С. Муніципальне право у системі національного права. *Центральноукраїнський правничий часопис Кіровоградського юридичного інституту ХНУВС : збірник наук. праць.* 2010. Спеціальний випуск. С. 33.

can not be integrated. Incorrect definition of the legal nature of legal disputes, consequently, leads to a violation of the rights of individuals and entities to judicial protection of rights[3].

Taking into account the mentioned above, the idea might arise that this paper will discuss the scientific law as an independent branch of law. This argument is also unconvincing if to take into account the fact that the scientific law regulating relations which appear during the implement ation of the state policy in the sphere of science, uses in most cases, the tools of administrative law.

Therefore, our studies are based on scientific ideas of R. Melnyk on the system of administrative law. Thus, in his view, attempts to improve the administrative law system will primarily fail because it is based on the Soviet system of administrative law within which, taking into account that it was formed on totalitarian state ideological grounds a place can not be found for the institutions and sub-branches of law inherent in a democratic, social and legal state[4].

We considert his approach acceptable and therefore support the view of R. Melnyk on the need to distinguish the general administrative law administrative law and special administ rative law in the system of administrative law. The general administrative law includes rules (including legal principles), operating in all areas of the organization and functioning of public administration. It combines the most typical, common in the legal regulation of this field[5]. Special administrative law should be built taking into account the list of duties (functions) of public administration. The procedure of each of these functions, and therefore regulation of relations that will arise in this area between the public administration and individuals within the public administration, and between the latter and other entities of public law should be carried out by a separate sub-branch of special administrative law[6].

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[3] Мельник Р.С. Муніципальне право у системі національного права. *Центральноукраїнський правничий часопис Кіровоградського юридичного інституту ХНУВС : збірник наук. праць.* 2010. Спеціальний випуск. С. 33.

[4] Мельник Р.С. Система адміністративного права України : дис. ... д-ра юрид. наук : 12.00.07. Х., 2010. С. 4–5.

[5] Адміністративне право України. Академічний курс : підручник у 2 т. : Т. 1. Загальна частина / редколегія: В. Б. Авер'янов (голова) та ін. К. : Вид-во «Юрид. думка», 2005. С. 127.

[6] Мельник Р.С. Система адміністративного права України : монографія. Харків : Вид-во Харків. нац. ун-ту внутр. справ, 2010. С. 118.

From the above mentioned it can be concluded that the special administrative law is a cover that combines the relevant rules. This thesis is also reflected in the Constitution of Ukraine, ch. 2, Art. 19 which, stipulates that government agencies and local government ts and their officials are obliged to act only on the basis within the authority and in the manner envisaged by the Constitution and laws of Ukraine[7]. In other words, the public administration can operate only in clearly defined direction with mandatory compliance with the provisions of applicable laws, rules which, in fact form a special sub-branches of administrative law.

One aspect of the functioning of public administration, according to the provisions of the Constitution of Ukraine, as well as basic regulations on activities of public administration (laws of Ukraine "On the Cabinet of Ministers of Ukraine"[8], "On local state administrations"[9], "On local government"[10]) is a science, development and support of which is considered one of the most important tasks of any country in the world.

The immediate subject of state policy in the field of science is the Ministry of Education and Science of Ukraine[11], local administrations and local governments which called on to develop science according to the laws. Specifying that task was secured in the Laws of Ukraine "On scientific and technical activity"[12]; "On Scientific and Technical Information"[13]; "Scientific and technical expertise"[14]; "On Special

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[7] Конституція України: Прийнята на п'ятій сесії Верховної Ради України 28.06.1996. *Відомості Верховної Ради України.* 1996. № 30. Ст. 141.

[8] Про Кабінет Міністрів України : Закон України від 07 жовтня 2010 р. № 2591-VI [Електронний ресурс]. Режим доступу: http://zakon2.rada.gov.ua/laws/show/2591–17.

[9] Про місцеві державні адміністрації : Закон України від 09 квітня 1999 р. № 586-XIV [Електронний ресурс]. Режим доступу: http://zakon4.rada.gov.ua/laws/show/586-14.

[10] Про органи місцевого самоврядування : Закон України від 07 червня 2001 р. № 2493-III [Електронний ресурс]. Режим доступу: http://zakon4.rada.gov.ua/laws/show/2493-14.

[11] Питання Міністерства освіти і науки України: Указ Президента України від 25 квітня 2013 року № 240/2013 [Електронний ресурс]. Режим доступу: http://http://zakon2.rada.gov.ua/laws/show/240/2013.

[12] Про наукову і науково-технічну діяльність: Закон України від 01.12.98. *Відомості Верховної Ради України.* 1999. № 2–3. Ст. 20.

[13] Про науково-технічну інформацію: Закон України від 25.06.93. *Відомості Верховної Ради України.* 1993. № 33. Ст. 345.

technological innovation parks"[15]; "On priority directions of science and technology"[16]; "On Scientific Parks"[17] and others.

Taking into account mentioned above, we can conclude that current Ukrainian systems of regulations are formed to regulate the organization and activities of public administration aimed at implementation of the state policy in the field of science. Performingt his task, public administration thereby ensures and realizes the right to freedom of scientific creativity of citizens of Ukraine, recorded in art. 54 of the Constitution of Ukraine. The set of legal rules are integrated within the framework of a scientific law, formed within the special administrative law Ukraine.

Ignoring this kind of reasoning leads to the fact that scientists are left aside theoretical issues that are important to know the nature of science. A typical example of this may be the case with the scientific study of the category of " State Policy in the Field of Science " around which all scientific laws are built.

Speaking about state policy as the category, we must take into account the fact that although the term “state policy” is widely used in the Ukrainian legislation, but it does not contain a clear normative definition of what we should understand under this category.

The analysis of Ukrainian legislation allows us to note the following:

First of all, the category of state policy is generally used in a particular context, in linking to specific needs. Thus, for example, the clause 1, Part 1 of the Art.1 of the Law of Ukraine “On the Principles of State Regional Policy” dated from February 5, 2015 enshrined the definition of “state regional policy”[18];

and secondly, the legislation of Ukraine uses synonymous of the category of state policy. For instance, Part 1 of the Art. 116 of the

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[14] Про наукову і науково-технічну експертизу: Закон України 10.02.95. *Відомості Верховної Ради України.* 1995. № 9. Ст. 56.

[15] Про спеціальний режим інноваційної діяльності технологічних парків: Закон України від 16 липня 1999 року. *Відомості Верховної Ради України.* 1999. № 40. Ст. 363.

[16] Про пріоритетні напрями розвитку науки і техніки: Закон України від 09 вересня 2010 року. *Відомості Верховної Ради України*. 2011. № 4. Ст. 23.

[17] Про наукові парки: Закон України від 25.06.09. *Відомості Верховної Ради України.* 2009. № 51. Ст. 757.

[18] Про засади державної регіональної політики: Закон за станом на 05.02.2015. *Відомості Верховної Ради України*. 2015. № 13. Ст. 190.

Constitution of Ukraine notes "the policy of the state", and Part 4 of the Art. 138 uses the term "policy of Ukraine"[19];

thirdly, there is a special Law of Ukraine "On the Principles of Internal and Foreign Policy" dated from July 01, 2010[20], which, although does not define the concept of "state policy",but outlines the main principles of the implementation of the internal and foreign state policy of Ukraine;

fourthly, state policy, in the context of realization of its certain directions, is mentioned in a fairly large number of laws of Ukraine and subordinate regulatory acts, for instance, in the Law of Ukraine "On Waste Products" dated from March 5, 1998[21] or in the Regulations about the Ministry of Regional Development, Building and Housing and Communal Services of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated from April 30, 2014 No. 197[22]. At the same time, these acts do not define the category of "state policy";

fifth, the Ukrainian legislation regulates the main directions of the state policy of Ukraine. It is about the foreign and internal state policy of Ukraine. Thus, in accordance with the Law of Ukraine "On the Principles of Internal and Foreign Policy" dated from July 1, 2010, Ukraine's internal policy consists of: internal policies in the spheres of developing local self-government and stimulating regional development; internal policy in the field of the formation of civil society institutions; domestic policy in the field of national security and defense; internal economic policy; domestic policy in the social sphere; internal policy in the environmental sphere and the sphere of technogenic safety, etc. The principles of Ukraine's foreign policy include: ensuring Ukraine's integration into European political, economic, legal space in order to gaine membership in the European Union; ensuring national interests and security of Ukraine by maintaining peaceful and mutually beneficial cooperation with the members of international community in accordance

[19] Конституція України: Закон за станом на 30.09.2016. *Відомості Верховної Ради України.* 1996. № 30. Ст. 141.

[20] Про засади внутрішньої і зовнішньої політики: Закон за станом на 08.07.2018. *Відомості Верховної Ради України.* 2010. № 40. Ст. 1452.

[21] Про відходи: Закон за станом на 04.10.2018. *Відомості Верховної Ради України.* 1998. № 36. Ст. 242.

[22] Про затвердження Положення про Міністерство регіонального розвитку, будівництва та житлово-комунального господарства України: Постанова за станом на 05.05.2017. *Офіційний вісник Ради України.* 2014. № 51. Ст. 114.

with generally recognized principles and norms of international law; ensuring protection of the sovereignty, territorial integrity and inviolability of Ukraine's state borders, its political, economic, energy and other interests by diplomatic and other means and methods provided by international law; ensuring protection of the rights and interests of citizens and legal entities of Ukraine abroad; establishment of the leading place of Ukraine in the system of international relations, strengthening international authority of the state, etc.

In case of the lack of a clear definition of the category of "state policy" in the legislation of Ukraine, it is necessary to refer to the works of scholars on this issue. In our opinion, any definition of state policy in the field of science should not contradict the general idea about politics in its traditional sense.

Thus, politics can be regarded as a consequence of the effects of the external environment and the distribution of power, as well as a set of leading ideas, and as a set of institutional structures, and as a decision-making process[23]. In the most abstract form, politics represents the sphere of interaction between classes, parties, nations, peoples, states, social groups, power and population, citizens and their associations. It is the most important and complex part of social life[24].

The abstract form of understanding politics does not determine a full-fledged approach to ascertaining its content, as there is a lot of controversy surrounding the definition of the most categorical notion. It is due to the multidimensional and multifaceted nature of this phenomenon.

This statement is confirmed by the historical fact, the essence of which is reduced to the fact that the issues of politics, state, society constantly attracted attention of thinkers of different eras and peoples. In the history of political thought, we distinguish such classical works on social philosophy as "State" and "Laws" by Plato, "Politics" by Aristotle, "On the State" and "On the Laws" by Cicero, "The Prince" by Machiavelli, "Leviathan" by Hobbes, "A Political Treatise" by Spinoza, "The Spirit of Laws" by Montesquieu, "On the Social Contract" by Rousseau, "The Metaphysical Foundations on Natural Science" by Kant,

[23] Тертичка В. Державна політика: аналіз та здійснення в Україні. Вид-во Соломії Павличко "ОСНОВИ", 2002. С. 82.

[24] Матузов Н. Понятие и основные приоритеты российской правовой политики. *Правоведение.* 1997. № 4. С. 12.

"Grundlagen des Naturrechts" by Fichte, "Philosophy of Law" by Hegel, as well as the works by Locke, Weber, Jaspers and other thinkers of the past and present time. However, it should be noted that the works of the ancient pillars of public opinion study not so much politics as a certain kind of state activity, but as a political world in the modern sense[25].

The problem of state policy in the national scientific literature has not yet been adequately covered, but some issues of this problem, namely: conceptual foundations of state policy, its analysis, means of implementation, etc. set out in the writings of some domestic scholars. Thus, the conceptual foundations for understanding the state policy in general can be reduced to the following formulations:

state policy is the political activity of the state and its institutions aimed at ensuring order in society, harmonizing and subordinating various social interests, achieving social harmony and organizing the management of the development of social processes (M.M. Lohunova, V.A. Shakhov, M.F. Shevchenko)[26];

state policy is relatively stable, organized and purposeful activity (inaction) of state institutions, carried out by them directly or indirectly regarding a certain problem or a set of problems that affect the life of society (V.A. Rebkalo, V.V. Tertychka)[27];

state policy is a relatively stable, organized and purposeful government activity in relation to a particular problem or object of consideration, which is carried out directly or indirectly through authorized agents and affects the life of society (V. Romanov, O. Rudik, T. Brus)[28].

In turn, state policy is reflected in its functions. It is well-known that the main function for the modern legal state is to protect the interests of a man, to protect his rights and freedoms, to ensure proper living conditions. Other functions of the state are, to any extent, subordinated to its implementation. Among them, one can distinguish, first of all, the creation of democratic conditions for the definition and

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[25] Гаджиев К. Введение в политическую науку. Издательская корпорация «Логос», 1997. С. 21.

[26] Логунова М. та ін. Концептуальні засади теорії політики. Вид.-во УАДУ, 1999. С. 26.

[27] Ребкало В. та ін. Державна політика: аналіз та впровадження в Україні. Вид-во УАДУ, 2002. С. 6.

[28] Романов В. та ін. Державна політика: аналіз та механізми її впровадження. ДРІДУ НАДУ, 2003. С. 5.

coordination of interests of various social groups of society; and secondly, the creation of conditions for the development of production; thirdly, the promotion of education, science and culture; fourthly, environmental protection; fifth, protection of the constitutional system; sixth, ensuring law and order.

In this regard, one can talk about state policy in various spheres of society. For instance, we talk about social, cultural, scientific, economic, regulatory, environmental, legal policy of the state. Thus, state policy is reflected in the purpose to regulate social relations, which are formed in real life.

The issue of the very nature of state policy in the field of science also causes contentious debate, reflecting the divergent views of scholars and practitioners on the role of the state in the scientific system. In this context, we consider it necessary to analyze the modern approaches of Ukrainian scholars to the the conceptual category titled in this article, which can be reduced to understanding in narrow and broad aspects.

B.A. Malytskyi in the broad sense defines state policy in the field of science as the long-term behavior of the state in regard to the issues related to science[29].

Representatives of the narrow approach (S.I. Zdioruk[30], H.I. Kalytych, K.M. Korzhavin[31]) perceive the state policy in the field of science as the totality of actions of state officials (state authorities, which they personify), aimed at resolving problems encountered in the process of human activities in the field of science. They distinguish among the types of principles for the formation of state policy in the field of science the following ones: legislative, normative and purely political (personal). The first two directions are often combined with one another, the latter is mainly considered in the context of an individual's role in the state process because of the complexity of distinguishing the actions of some political leaders in making a political decision, especially when the change of policy direction occurs contrary to the current legislative and normative principles of the activity.

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[29] Малицький Б. Актуальні питання методології та практики науково-технічної політики. УкрІНТЕІ, 2001. С. 8.

[30] Здіорук С. Гуманітарна політика Української Держави в новітній період : монографія. НІСД, 2006. С. 33.

[31] Калитич Г.І. та ін. Науково-технологічний та інноваційний розвиток: концепції, моделі, рішення. УкрІНТЕІ, 2008. С. 105.

The analysis of the above definitions indicates that state policy is often viewed from structural positions, that is, as an entity consisting of a certain set of elements. This approach is mechanical to a certain extent, because those numerous relations and factors that ensure its smooth functioning remain unaddressed. That is why, in our deep conviction, it is necessary to distinguish two aspects – strategic and tactical as the basis of understanding the state policy.

Taking the following scientific provisions as the basis, we can define state policy as a strategy and tactics that determines the state's activities in a certain area of life of society and the state. Such an activity is carried out by the state systematically in order to achieve certain socially useful results. In our opinion, this very approach to the understanding of state policy allows us to show its teleological nature, i.e. that it is aimed at achieving a certain specific goal, which should be determined by the state policy strategy in a particular field. This, however, does not exclude the possibility that there may be intermediate goals, which achievement is determined by the tactics of state policy and achievements of which are a certain stage in the reaching the general goal of state policy in a particular field.

Taking into account the above mentioned, in our opinion, state policy in the field of science can be nominated as a strategy and tactics of state activity in the field of science, which is in line with national interests and international standards. At the same time, the important stages of the formation and, at the same time, the key determinants of its effectiveness are forecasting effort, strategic planning and object-oriented programming.

Forecasting effort in the field of science is scientifically grounded hypothesis about the possible state of science in the future, depending on the nature of the forecast background, as well as on the terms and means of achieving the set goals. The modern stage of social development is saturated with spontaneous events, paradoxical phenomena and uncontrolled processes capable of instantly redrawing the image of the future. Under such conditions, no primary forecast (especially medium or long-term) remains forever relevant – from the moment of creation to the end of the action. Under the pressure of random factors, the difference between the initial parameters of the forecast and the actual socio-economic indicators is increasing, until it reaches a critical limit. After this, the forecast finally loses relations with reality, and the

programs and plans developed on its basis lose their practical importance.

Only the regular corrections due to changes in the object of regulation and the environment (forecast background) can stop the prognosis "devaluation" of the forecast. Only a systematic correction allows us to ensure the proper flexibility of the forecast, its adequacy to the current situation, and "consistency" with objective tendencies. Thus, scientifically-based forecasting is not simply a basic forecasting (forecast of socio-economic development, forecast of the effectiveness of planned activities, etc.). It is also their continuous refinement at all stages of the process.

Unfortunately, prognostic activities in the field of science are often carried out by evasion of the methodology. Over the past decades, any conceptual or programmatic document on science issues has been reviewed in regard to the relevance of forecasting. Appropriate forecasts remained in force even when their unreality became apparent from the very beginning. In general, prediction in the field of science has limited, static nature. It is carried out only at the previous stages of making strategic decisions and never accompanies the process of their implementation.

Touching upon the problems of forecasting, it is impossible to evade the issue of verification. Verification is an important part of the forecasting process. In the course of verification, the degree of reliability of the forecasts is determined, their gaps are clarified, the causes of the errors are established. In turn, the obtained information helps to rationalize the forecast activity, to avoid past failures and to improve overall planning effectiveness.

Verification is important not only in terms of summing up the final results of the forecast. It is expedient and desirable at the stage of its development. Preliminary verification – is an effective tool for checking the forecasts for the compliance with the requirements of modern science, the calculation of the probability of their implementation for the given confident intervals, assessment of their functional completeness.

Unfortunately, forecasting in the field of science is not supported by verification either at the initial stage or in the final phase. This is precisely why one can explain the fact that many of the forecasts lose relevance shortly after their development, and their methodological errors are replicated with constant consistency.

Strategic planning is the mean of formal prediction of future problems and opportunities in both any sphere and the field of science.

Strategic planning in the field of science is the key element of strategic public administration in the development of science, which helps authorities responsible for the implementation of scientific policy directions to make decisions that are coordinated with the approaches to the realization of their functions, objectives and tasks.

The role of strategic planning in forming state policy in the field of science can not be overestimated that allows consolidating resource potential in the most important areas of government activity, rational distribution of existing forces and resources, avoiding various imbalances, unnecessary steps, and wasteful expenditures. Finally, the flexibility of the state policy in the field of science in Ukraine, its tolerance to crisis phenomena and adequacy to the challenges of time precisely depend on the strategic planning in the field of science.

At the present stage of the development of Ukrainian society, the serious disadvantage of strategic planning both in any sphere and in the field of science is its discrete nature. In accordance with the current legislation, the development of state target-oriented programs and their concepts is carried out on the initiative of public authorities by the actualization of certain problems of social life[32]. In practice, this means that the target-oriented programs (concepts) are adopted not with a predetermined periodicity, but depending on a number of objective and subjective factors, such as: the existence of a certain problem, the existence of political will to solve it, the appropriateness of socio-political situation, etc. And this leads to the fact that unresolved problems continue to be escalated and gain increasing scales.

The main form of planning in the field of science is the development of state target-oriented programs aimed at solving the most important problems of the development of science.

State target-oriented programming in the field of science is an algorithm for developing a set of interrelated tasks and measures aimed at solving the most important problems of science development, are carried out by the usage of the funds of the State Budget of Ukraine and

[32] Про державні цільові програми: Закон за станом на 12.10.2018. *Відомості Верховної Ради України*. 2004. № 25. Ст. 956.

agreed upon by terms of execution, composition of performers, resource provision.

State target-oriented scientific, research and technical programs are the main mean of concentration of scientific and technical potential of the state for solving the most important natural, technical and humanitarian problems and realization of the priority directions of science and technology development.

The key points of state target-oriented programming in the field of science are: identification and systematization of strategic goals; development of an integrated system of measures aimed at their achievement; construction of a clear algorithm for the implementation of the planned activities (with a preliminary definition of the performers, sources and amounts of financing); maximum determination of planned parameters, criteria, indicators; the presence of control mechanisms and responsibility for the achieved results. Thus, state target-oriented programming in the field of science is characterized by complexity, multi-parameter nature, algorithmics, applied orientation and imperativeness.

Unfortunately, the development, adoption and implementation of most of the science-related programs is outside the unified legal field. There are currently no legislative acts or, at least, government decrees that would establish general requirements for non-targeted program documents, would regulate the procedure for their creation, would provide control over their implementation. This, on the one hand leads to a huge difference in programming, and on the other – stipulates the irresponsibility of its subjects.

CONCLUSIONS

Taking into account the above scientific considerations, we can state that the reasonableness of state policy in the field of science, its purposefulness, reality and efficiency depend on the quality of forecasting effort, planning and programming. At the same time, even minor mistakes in their implementation may turn into serious problems while solving important political tasks. That is why, in our opinion, it is expedient to make amendments to the Art. 56 of the Law of Ukraine "On Scientific, Research and Technical Activity" and to supplement it with the Art. 56-1, which should define forecasting effort, strategic planning and object-oriented programming as the methods of state regulation and

management in scientific, research and technical activity. To this end, the Articles 56 and 56-1 of the above-mentioned Law shall be worded as follows:

The Article 56. Forecasting Effort in the Field of Scientific, Research and Technical Activity

Forecasting effort in the field of scientific, research and technical activity is a scientifically grounded hypothesis about the possible state of scientific, research and technical activity in the future, depending on the nature of the forecasting background, as well as about the terms and means of achieving the set objectives.

Forecasts of the state of scientific, research and technical activity are developed for short-term (1-3 years) and medium-term (5 years) periods.

The central executive authority in the field of science is responsible for developing the forecasts for the state of scientific, research and technical activity.

Forecasts of the state of scientific, research and technical activity are being developed in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

Indicators for predicting the state of scientific, research and technical activity serve as the basis for the development of state target-oriented programs on science issues.

The Article 56-1. Planning in the Field of Scientific, Research and Technical Activity

The main form of planning in the field of scientific, research and technical activity is the development of state target-oriented programs aimed at solving the most important problems of science development.

State target-oriented scientific, research and technical programs are developed, approved and implemented on the basis of the Law of Ukraine "On State Target-Oriented Programs", in accordance with the procedure established by the Cabinet of Ministers of Ukraine.

National target-oriented scientific, research and technical programs are developed for a period of five years. Sectoral and local target-oriented scientific, research and technical programs are developed for a period from three up to five years, taking into account the duration of the current national target-oriented programs.

State target-oriented scientific, research and technical programs are the main mean of implementing priority directions of the development of science and technology by concentration of scientific and technical potential of the state for solving the most important natural, technical and humanitarian problems.

State target-oriented scientific, research and technical programs on the priority directions of science and technology development are formed by the central executive authority in the field of scientific, research and technical, innovation activity on the basis of target-oriented projects selected on a competitive basis.

SUMMARY

On the modern stage of Ukrainian society's development, we make findings of the fact that there is no conceptual idea about the content of state policy in the field of science, about the mechanisms of its formation and realization. The foregoing stipulates the necessity of formulation of the completed and perfect theory of state policy in the field of science.

The author of the article has set the **objective** through the prism of the analysis of the current legislation norms, as well as critical studying the works of modern scholars, to formulate the author's concept of state policy in the field of science in Ukraine and to define key determinants of its efficiency.

Achievement of the formulated objective is carried out by the assistance of comprehensive and consistent application of the proper scientific tools, presented by such **methods** of scientific cognition as: logical and semantic, system, structural and logical, by the methods of grouping, deduction, induction, analysis and synthesis, etc.

Results. The author of the article has accomplished analysis of scientific works focused on finding out the content of state policy in the field of science. The author has succeeded to establish that state policy in the field of science is rather often considered from structural point of view, i.e. as derivation, which consists of certain aggregate of elements. In author's opinion, such an approach is mechanical to a certain extent, then those numerous relations and factors, which provide its concerted functioning, remain unaddressed. For solving this task, as noted in the article, it is necessary to determine the state policy in the field of science

as a strategy and tactics of state activities in the field of science that corresponds national interests and international standards.

As a result the author makes **conclusions** that the important stages of forming and, at the same time key determinants of state policy efficiency in the field of science in Ukraine are: forecasting effort, strategic planning and object-oriented programming. To increase the efficiency of the implementation of state policy in the field of science in Ukraine, the author has grounded the necessity of making amendments and alterations to the Law of Ukraine "On Scientific, Research and Technical Activity", which must determine forecasting effort, strategic planning and object-oriented programming as the methods of state regulation and management in the scientific, research and technical activity.

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CORPORATE SOCIAL RESPONSIBILITY V. BUSINESS & HUMAN RIGHTS: MAKING A PORTRAIT OF A SOCIALLY RESPONSIBLE BUSINESSMAN

Poiedynok V. V.

INTRODUCTION

Famous are the words of Milton Friedman that "few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible"[1]. Nevertheless, in the modern world most accept that business, while focused on making profit, should also be socially responsible. There two sides of the coin: on one side, companies should be conscious of the kind of impact they are having on all aspects of society including economic, social, and environmental (positive responsibility), on the other side, they should also be held accountable for the harm inflicted (negative responsibility).

Corporate Social Responsibility (CSR) and Business and Human Rights (BHR) are closely related global courses of legal academic thought focused on companies engaging in responsible and socially beneficial activities. Still, both concepts have considerable differences and hence distinct profiles that roughly correspond to the abovementioned sides of the coin.

Historically, CSR has focused on corporate voluntarism and expectations of corporations as so-called "corporate citizens" with responsibilities arising from their role as social partners[2]. Companies are encouraged to engage in activities ranging from corporate philanthropy to the provision of aid in case of governmental failure, because it is good for business. Generally, CSR emphasizes self-guided decision making

[1] Friedman M. Capitalism and freedom. Chicago: University of Chicago Press, 1962, P. 133.

[2] Carroll Archie B. Corporate social responsibility: Evolution of a definitional construct. *Business & Society*. 1999. № 38(3). Pp. 268–295.

rather than the imposition of legally binding requirements and voluntary measures rather than state-sponsored regulation[3].

By contrast, BHR, grows out of a quest for corporate accountability to mitigate or prevent the adverse impacts of business activity on individuals and communities and out of expectations grounded in a specific core set of human rights obligations. BHR has, at times, focused more narrowly on holding corporations accountable for harm caused rather than on a positive recognition of the role business might play in protecting and promoting human rights[4].

In particular, BHR calls companies, states, and civil societies for measuring corporate conduct against universally recognized human rights principles embodied in a key set of treaties[5]. Essentially, BHR focuses on victims or impacted communities and articulates their concerns in terms of treaty-based human rights.

To some extent, BHR is a response to CSR and the potential failure of the latter being a vague and weak concept. This leads to the fact that both concepts are contrasted to each other by their supporters rather than productively interacting.

Both concepts are global in their expansion and intensive in their development, in particular, both in the United States and in the EU. It would be largely unfair to say that they are unknown in Ukraine. The legal issues of CSR have been comprehensively dealt with in the works of Iryna V. Lukach[6,7]. Since 2008, the expert organization -Center for the Development of Corporate Social Responsibility (CSR Center) has been active[8]. In 2017 the Center for Policy Studies of Business & Human Rights was created under the aegis of the Economic and Legal Studies

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Institute of the National Academy of Sciences of Ukraine. In 2018 the Institute and the Business & Human Rights Resource Center, based in UK, signed a Memorandum of Understanding and started a Joint academic and applied project "Advancing Business and Human Rights Framework: Drivers for Ukraine"[9]. Still, it is clear that the concepts in question are not deeply rooted in Ukrainian legal thinking and are perceived as foreign. Academic papers focused on comparative discussion of the concepts and their relevance for Ukrainian legal doctrine, are non-existent in Ukraine.

The article aims to study the concepts of "Corporate Social Responsibility" and "Business & human rights", and, in particular, to identify their common and distinctive features. I also seek to outline the perspective ways of their integration and to highlight their importance for the national legal doctrine in Ukraine.

1. Csr: Bottom-Top

Corporate social responsibility (CSR, also called corporate sustainability, sustainable business, corporate conscience, corporate citizenship, conscious capitalism, or responsible business) is a type of international private business self-regulation. While on its earlier stages it was possible to describe CSR as an internal organizational policy or a corporate ethic strategy, that time has passed as various international laws have been developed and various organizations have used their authority to push it beyond individual or even industry-wide initiatives[10].

Historically, CSR grew out of analysis of the role of the private sector in the aftermath of World War II. In 1949, Donald K. David, Dean of the Harvard Business School, wrote an article entitled "Business Responsibilities in an Uncertain World"[11]. Shortly afterwards, Bernard Dempsey published the "Roots of Business

[9] В Інституті економіко-правових досліджень НАН України відбувся міжнародний науково-практичний семінар «Зміцнення засад у сфері бізнесу і прав людини: драйвери для України» URL: http://www.nas.gov.ua/EN/Messages/News/Pages/View.aspx?MessageID=4408 (accessed 01.06.2019).

[10] Corporate social responsibility: From Wikipedia, the free encyclopedia URL: https://en.wikipedia.org/wiki/Corporate_social_responsibility (accessed 01.06.2019).

[11] David D. Business Responsibilities in an Uncertain World. *Harvard Business Review.* 1949. № 27 (3 Suppl.). Pp. 1–8.

Responsibility" in the *Harvard Business Review*[12]. In both of these articles, the authors called upon business to contribute to the well-being and progress of individuals and society. Business had an obligation to create a just society beyond the boundaries of the business entity. Another key scholar Morell Heald highlighted corporate philanthropy as the earliest form of CSR as well as cooperation and leadership on a range of community issues[13].

In 1953 Howard Bowen published the landmark book "*Social Responsibilities of the Businessmen"*, discussing the concept of businessmen and their obligation to pursue objectives desirable for society. Bowen set forth an initial definition of the social responsibilities of businessmen: "It refers to the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society"[14]. He is credited by many as the father of CSR and the book marks the beginnings of the modern period of literature on this subject.

Patrick Murphy differentiates between four "CSR eras": *the "philanthropic" era* (the period up to the 1950s), in which companies donated to charities more than anything else; *the "awareness" era* (1953–67), in which there became more recognition of the overall responsibility of business and its involvement in community affairs; *the "issue" era* (1968–73), in which companies began focusing on specific issues such as urban decay, racial discrimination, and pollution problems; *the "responsiveness" era* (1974-8 and continuing beyond), in which companies began taking serious management and organizational actions to address CSR issues, including altering boards of directors, examining corporate ethics, and using social performance disclosures[15].

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[12] Dempsey B. The Roots of Business Responsibility. *Harvard Business Review.* 1949. № 27 (4). Pp. 393–404.

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[14] Bowen H. Social Responsibilities of the Businessman. Iowa City: University of Iowa Press, 1959/2013, p. 6.

[15] *History of Corporate Responsibility Project. Corporate social responsibility: The shape of a history, 1945–2004* : Center for Ethical Cultures Working Paper, 2005. Pp. 24–25. URL: http://www.cebcglobal.org/index.php?/knowledge/history-working-papers/ (accessed 01.06.2019).

Still, CSR lacks common definition. According to Andreas Georg Scherer & Guido Palazzo, the bordering concepts are business and society, business ethics, and stakeholder theory[16] .

CSR academics have debated what obligations do fall within CSR – whether it is enough for companies to comply with general legal and economic obligations (complying with law) or whether CSR represents an additional layer of obligations beyond mere compliance. In my view, Keith Davis is to be sited here: "For purposes of this discussion it [CSR] refers to the firm's consideration of, and response to, issues beyond the narrow economic, technical, and legal requirements of the firm. It means that social responsibility begins where the law ends. A firm is not being socially responsible if it merely complies with the minimum requirements of the law, because this is what any good citizen would do"[17]. I strongly support the latter point: mere compliance with law does not require special names, and under normal conditions of the rule of law is a routine, not a best practice worth lauding. But anyway, the emphasis in the CSR discourse is more on a corporate responsibility and responsiveness rather than on state-driven regulation or accountability[18].

Approaches to CSR vary also geographically. As Iryna V. Lukach points out, the American trend in introducing CSR is characterized by a more voluntary approach; in this, the load of implementing CSR is borne by the public and is based on the social awareness of citizens and corporations alike. For Europe, enhancing the governmental regulation of CSR standards is more characteristic and is based on CSR reporting and accountability[19].

The European Commission defines CSR as "the responsibility of companies for their effect upon society"[20]. European approach to CSR

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[16] Scherer A., Palazzo G. Toward a Political Conception of Corporate Responsibility: Business and Society Seen from a Habermasian Perspective. *Academy of Management Review.* 2007. № 32 (4). P. 1096.

[17] Davis K. The case for and against business assumption of social responsibilities. *Academy of Management Journal.* 1973. № 16. P. 313.

[18] Center for Ethical Business Cultures. *Corporate social responsibility: Shape of a history, 1945–2005. History of Corp. Responsibility Project* : Working Paper No 1, Minneapolis. MN: University of St. Thomas, 2005. P. 16.

[19] Лукач І.В. Теоретичні проблеми правового регулювання корпоративних відносин в Україні : монографія. С. 94.

[20] Communication from the Commission to the European parliament, the council, the European economic and social committee and the committee of the regions A renewed EU strategy 2011-14 for Corporate Social Responsibility. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0681&from=EN (accessed 01.06.2019).

was legally shaped by the Directive 2014/95/EU28 amending Directive 2013/34/EU29 as regards disclosure of non-financial and diversity information by certain large undertakings and groups[21]. Pursuant to the Directive, large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year shall include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters (Article 1 (1)).

Directive 2014/95/EU promotes the "comply or explain" principle: if a company fails to pursue policies relating to anti-bribery and corruption, environmental, or other non-financial matters, it will have to explain the reasons for such failure in its annual report. The directive instructs Member States to "ensure that adequate and effective means exist to guarantee disclosure of non-financial information..." and, to that end, that "effective national procedures are in place to enforce compliance with the obligations laid down by this Directive..."[22].

In providing this information, undertakings which are subject to this Directive may rely on national frameworks, Union-based frameworks such as the Eco-Management and Audit Scheme (EMAS), or international frameworks such as the United Nations (UN) Global Compact, the Guiding Principles on Business and Human Rights implementing the UN 'Protect, Respect and Remedy' Framework, the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the International Organisation for Standardisation's ISO 26000, the International Labour Organisation's Tripartite Declaration of principles concerning multinational enterprises and social policy, the Global Reporting Initiative, or other recognised international frameworks (Preamble, para.9).

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[21] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (2014) OJ L330/1.

[22] Kolohoida O., Lukach I., Poiedynok V. Legal Aspects of Corporate Social Responsibility in Ukraine on the Way to European Integration. *Croatian Yearbook of European Law and Policy*. 2017. № 13. P. 304.

CSR is portrayed as important to the competitiveness of enterprise. The concept is meant to bring benefits in terms of risk management, cost savings, access to capital, customer relationships, human resource management, and innovation capacity. CSR, as defined, may encompass some aspects of human rights – in particular labor and social rights – but the focus of CSR has been broader and not as explicit about human rights as an end goal. CSR, in contrast, incorporates human rights, at best, as a component of a larger ethical and value-based set of decisions[23].

Due to the leading role of a corporate decision-making in the CSR framework one can describe CSR as a *bottom-top (bottom-up) phenomenon*.

2. Bhr: Top-Bottom

This is where BHR provides an alternative, a focus on establishing a core obligation of companies to respect human rights wherever they operate, to do no harm and when harm is caused to provide a meaningful remedy to victims[24].

BHR as a strand of legal thought has existed since the late 1970s. Its focus on the "legal" as opposed to moral or ethical considerations is not incidental. It emerged out of reaction at specific tragic cases and the subsequent attempt to compensate for the damage already done, rather than the theoretical discussion about the role of companies as bearers of positive obligations along with the states. The negative social effects of doing business have become particularly well known in connection with the activities of transnational corporations (TNC) in so-called "host countries".

The track record of human rights abuses by companies is lengthy and multi-faceted. In the 1980s, a gas leak at Union Carbide's pesticide plant in Bhopal, India, killed and injured thousands of people and highlighted how difficult it is for victims in transnational tort cases to seek a remedy from a TNC[25]. In the mid-1990s, companies

[23] Ramasastry A. Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability. *Journal of Human Rights*. 2015. Vol. 14. № 2. Pp. 239–240.

[24] Ibid. P. 240.

[25] Bhopal disaster. URL: https://en.wikipedia.org/wiki/Bhopal_disaster (accessed 01.06.2019).

predominantly in the extractive sector started to be called out publicly, for example, for their role in human rights violations committed by hired security forces or for their collusion with repressive governments in violently putting down demonstrations and protests. Examples include Enron in India, Unocal in Burma, ExxonMobil in Indonesia, and perhaps most prominently, Shell in Nigeria for its role in the execution of playwright and activist Ken Saro-Wiwa and the assault by the Abacha government on the fundamental rights especially of the Ogoni people in the Niger Delta[26].

At the same time claims were brought against Swiss banks, European insurers, and German corporations with respect to their involvement in World War II. Numerous abuses were found also in apparel and footwear industry. Nike and Wal-Mart, for example, were revealed to have child labor in their supply chains. Nike was also reported to use factories in Southeast Asia with very poor health and safety conditions, as well as the GAP. In the tech sector, Yahoo and other Internet giants were linked to human rights abuses in China. Yahoo, in particular, was sued under the Alien Tort Statute when it was revealed that it had handed over subscriber information to the Chinese government, which led to the imprisonment and torture of prominent Chinese dissidents[27].

What was new about the emerging debate was not per se the connection of human rights and business, but rather that its concern with human rights started to reach decisively beyond labor and employment issues, which significantly differed it from the CSR debate.

The modern legal articulation of the BHR concept are the *UN Guiding Principles on Business and Human Rights (UNGPs)*, unanimously adopted by the UN Human Rights Council in 2011[28]. The man behind the UNGPs was Professor John Ruggie, serving as the Special Representative to the UN Secretary General on Business and Human Rights. It's worth mentioning that UNGPs make no reference to CSR.

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[26] Wettstein F. CSR and the debate on business and human rights. *Business Ethics Quarterly*. 2012. № 22(4). P. 745.

[27] Ramasastry A. Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability. P. 242.

[28] United Nations Guiding Principles on Business and Human Rights. URL: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (дата звернення 28.05.2019).

UNGPs have three pillars representing their key ideas:

Pillar I is the state duty to protect against human rights abuses by third parties, including business,

Pillar II is the corporate responsibility to respect human rights, and

Pillar III is access to remedy, calling for states and the private sector to provide victims with access to effective remedies, judicial and nonjudicial.

The tripartite framework is described by the motto "Protect, Respect and Remedy".

Traditionally, human rights obligations are addressed to states and have been intended principally to regulate the relations between individuals and the state. The state not only bears a duty to respect the human rights of the individuals on its territory, but also has a duty to ensure that private actors, including companies, do not violate those rights. This has been explicitly included in the 1966 International Covenant on Civil and Political Rights (ICCPR), which gives states the obligation "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant"[29].

In this vein, Principle 1 of the UNGPs obliges states to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

Moreover, the Commentary to Principle 3 (General state and Regulatory Functions) points out that States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.

The acknowledgement of the leading role of the state as a regulator and enforcer of laws is a fundamental feature of BHR and at the same time clearly distinguishes this concept from CSR. BHR focuses primarily on the role of states in supervising their corporate citizens, and not merely encouraging them – both inside and outside the home country.

[29] 1966 International Covenant on Civil and Political Rights, 999 UNTS 17, Article 2.

Pillar II of the UNGPs, concerned with corporate responsibility to respect human rights, refers to "internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organization" (Principle 12). The Commentary to Principle 12 goes in more detail: "An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises".

Pillar II is non-binding, as it merely calls for companies to respect human rights via risk assessment in the form of an ongoing process referred to as *human rights due diligence.* This process is not meant to be a one-time look at company operations but a continuous process of identifying risks of companies that may cause or contribute to adverse human rights impacts. Due diligence helps them to identify and prevent harms but, more importantly, to provide access to remedy. Human Rights due diligence provides companies with a process by which to assess corporate conduct against a universal set of rights. Companies are meant to engage in an ongoing and iterative process to assess conduct against a common set of rights. Human rights due diligence is subject to critic, however, as some see it as too weak of a measure to hold companies accountable for their wrongdoings[30].

Finally, Pillar III calls for states to provide access to judicial remedy and for companies and states to also provide for nonjudicial mechanisms in case of business-related human rights abuse. The Commentary to Principle 25 points out that "unless States take appropriate steps to investigate, punish and redress business- related human rights abuses

[30] Ramasastry A. Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability. P. 247.

when they do occur, the State duty to protect can be rendered weak or even meaningless".

The essence of the UNGPs as a legal articulation of BHR concept can be summarized as follows. Firstly, States bear the duty to actively protect human rights; not per se responsible for human rights abuse by private actors, they are obliged to foster corporate respect. Secondly, companies are called not to just comply with law or even behave in a socially responsible way, but are asked to perform human rights due diligence. Finally, when companies have contributed to or caused harm, the UNGPs ensure that victims have access to a proper remedy of a judicial or non-judicial character.

Due to the leading role of the state in the BHR framework one can describe BHR as a *top-bottom (top-down) phenomenon*.

3. A Common Course and Ukrainian Dimension

The main direction of criticism of the UNGPs is that their developers focused the corporate involvement in ensuring human rights on the *negative obligation* to refrain from human rights abuse rather than on the *positive obligation* to promote the realization of human rights, while all positive obligations in this vein belongs exclusively to the state. In the meantime, states often cope poorly with the role of major enforcer and protector, and companies can also play an important role in this regard. In the modern world, companies often outperform the state in the possibilities of dominance and impact or, at least, can positively influence the state's performance of its functions.

And this is where BHR could actually borrow from CSR in terms of creating obligations or expectations that companies play a stronger role in the promotion of human rights – in positive obligations[31].

On the other hand, there are indications that CSR is being redefined to encompass a limited vision of BHR. The new EU definition of CSR as "*the responsibility of enterprises for their impacts on society*" brings the concept much closer to BHR along with the legislative initiatives on non-financial reporting discussed above. The European Commission, in its CSR Report, notes: "Although there is no "one-size-fits-all" and for most small and medium-sized enterprises the CSR process remains informal, complying with legislation and collective agreements

[31] Wettstein F. CSR and the debate on business and human rights. P. 739.

negotiated between social partners is the basic requirement for an enterprise to meet its social responsibility. Beyond that, enterprises should, in the Commission's view, have *a process in place to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy* in close cooperation with their stakeholders"[32]. It also states that governments can use regulation "to create an environment more conducive to enterprises voluntarily meeting their social responsibility"[33]. The Commission has expressly said: «…we've introduced a smart mix of voluntary and mandatory actions to promote CSR, and implement the UN guiding principles on business and human rights (UNGPs)"[34].

The analysis of CSR and BHR presents some apparent synergies and complementarities between the two. Most prevalently, the wide and proactive focus of CSR contrasts with and complements the binding character of human rights obligations. A closer integration of the two debates, as Florian Wettstein argues, would allow for the formulation of an expansive and demanding conception of corporate human rights obligations. Such a conception does not stop with corporate obligations "merely" to respect human rights, but includes an extended focus on proactive company involvement in the protection and realization of human rights. In other words, the integration of the two debates provides the space within which to formulate positive human rights obligations for corporations[35].

What is the level of Ukraine's involvement with CSR and BHR? According to the survey "CSR Development in Ukraine: 2010-2018", despite the fact that most companies (83%) implement CSR, only half (52%) of them have a social responsibility strategy (policy) and half as many own a budget for its execution (24%). Only one third of companies have experienced increase in budget dedicated to social responsibility during last three years. Only 12% have a system of indicators to measure the efficiency of social responsibility policy, reports are prepared by 13% of companies. Though, the list of indicators provided by representatives of companies to measure the level of activity

[32] Communication from the Commission (n 13) para 3.

[33] Communication from the Commission (n 13) para 5.

[34] Corporate Social Responsibility & Responsible Business Conduct. URL: https://ec.europa.eu/growth/industry/corporate-social-responsibility (accessed 01.06.2019).

[35] Wettstein F. CSR and the debate on business and human rights. P. 739.

dedicated to social responsibility gives grounds to affirm that Ukrainian companies are actually deprived of these indicators[36]. As to the figure 83%, I consider it as a big overestimation attributing to a fact that companies regard as CSR things that in fact constitute basis compliance with labor law ("white" salaries, operational safety measures and so on).

The survey highlights strong dependence of the CSR policies upon state support. Hence, the concluding recommendations are focused on the state as a primary driver of the CSR development:

1. Considering the fact that CSR development in companies greatly depends on the support of the state, it would be reasonable to introduce CSR requirements for public companies, primarily.

2. The primary incentive for CSR integration in Ukraine would be introduction of mandatory non-financial disclosure in annual reports for large and public companies pursuant to the European legislation (Directive 2014/95/EU).

3. It is extremely important to introduce tax, customs benefits for the companies implementing CSR, primarily, those engaged into energy efficiency increase measures with the use of production capacities, use of renewable sources of energy, social investing into development of a region of their presence.

4. It is rather important that the government recognizes the companies implementing CSR by means of national and regional ratings, awards, etc.

5. At the national level, it would be essential for the state to develop and adopt the National strategy for corporate social responsibility which would provide the Ukrainian business with guidance and prospects for support and recognition on the part of the state.

6. At the local level, a good impetus for CSR implementation would be creation of a bank with data on region's needs for social investments, environmental projects, creation of a platform of non-government and research organizations promoting ideas of social responsibility and providing educational and consulting services on these issues[37].

Drawing on Ukrainian experience, Oleksandra Kolohoida, Iryna Lukach and Valeriia Poiedynok highlight the necessity of non-financial

[36] Зінченко А., Саприкіна М. Розвиток КСВ в Україні: 2010–2018. К.: Юстон, 2017. С. 25.

[37] Ibid. P. 50.

reporting not only for public companies but also for other public-interest entities (i.e. big companies in general). In Ukraine, some large companies are afraid to register as a company limited by shares while the stock market is still not fully formed. For example, Nova Poshta which is the leader in the private mail delivery market employs 22,000 people, although it is a limited liability company (the LLC form in Ukraine is regulated more like that in the USA and not as in Germany), while Epicentr, the largest Ukrainian construction products supermarket network, hardly has any information on the number of employees. It is also important to fulfil provisions concerning consolidated non-financial statements in Ukraine and remember that many Ukrainian enterprises are members of large groups[38].

As regards BHR, the UN Human Rights Council has encouraged all states to adopt National Action Plans (NAPs) to implement the UNGPs. Moreover, the UN Working Group on Business and Human Rights, which consists of five experts, has published detailed guidance on both the content of NAPs and the process by which they should be developed[39]. To date NAPs have been developed and published by the overwhelming majority of the EU countries, the USA, South Korea, Colombia, Chile, and Georgia. Ukraine belongs to the countries that are in the process of developing the NAP[40]. This is a good result, in view of the fact that, apart from Georgia and Ukraine, no other country of the former USSR, nor a number of Central and Southern European countries has taken any steps in this direction.

That said, I believe that the degree of Ukraine's involvement in the global CSR and BHR discourses should be evaluated with only limited optimism. It is clear that the burden of participation in this discourse is carried out by highly specialized agencies and a narrow circle of specialists. In the meantime, the concepts of socially responsible business became capable only under condition of proper awareness of these concepts by a wide range of Ukrainian companies and their

[38] Kolohoida O., Lukach I., Poiedynok V. Legal Aspects of Corporate Social Responsibility in Ukraine on the Way to European Integration. P. 302.

[39] Guidance on National Action Plans on Business and Human Rights, Version 1.01. URL: http://www.ohchr.org/Documents/Issues/Business/UNWG %20NAPGuidance.pdf (accessed 01.06.2019).

[40] National Action Plans on Business and Human Rights. URL: https://globalnaps.org/ (accessed 01.06.2019).

stakeholders. This determines the special significance of the educational and promotional components. A leading role in disseminating the ideas and practices of socially responsible business can be played by courses on social responsibility at higher educational establishments and centers for professional development and advanced studies, publishing handbooks, holding public events for academia and practitioners, etc. This is primarily a public law affair but at the same time calls for a deep understanding of business motivation. It seems that the national doctrine of economic law, with its focus on compliance with public interest in doing business and its methodological pluralism, is best suited for this role. The fact that its realization requires the mastery of aspects that traditionally lay outside the economic law agenda (i.e. human rights) should be seen not as an obstacle, but as an opportunity for the enrichment and development of the economic law doctrine.

On the other side, Ukraine could actually benefit from being a novice in the fields of CSR and BHR. It is in a good position to take a fresh and unobscured view of both debates and to avoid a pitfall of a separate development or even competition between them instead of mutually beneficial integration. Unfortunately, the danger of such separation is quite real as each debate is conducted by its "own" specialized team which may not be motivated to engage in broader discourse. Here, again, a national legal doctrine can provide the necessary theoretical foundation as well as the interface of interaction in making a comprehensive portrait of a socially responsible businessman.

CONSLUSIONS

Corporate Social Responsibility and Business & Human Rights are contextually and conceptually different courses of global legal thought, which, however, ultimately serve the common goal of ensuring socially responsible business behavior. While CSR focuses on socially responsible behavior in the broad sense, driven by the will of the companies themselves who see the way to increasing their own competitiveness in this behavior, BHR focuses on specific legal obligations of companies in the field of human rights and remedying the harm caused. BHR positions itself as a response to a "legally vague" CSR and its potential failure, but suffers from its own methodological deficiency as is largely neglects the positive role that companies can play in protecting and promoting human rights.

Although the United Nations Guiding Principles on Business and Human Rights (UNGPs) as a legal articulation of BHR don't refer to CRS, Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups does mention UNGPs among the frameworks which may be used by companies when complying their non-financial reports. A new definition of CSR given by European Commission also suggests the increased willingness to include human rights considerations into the CSR agenda. Surely, there is a potential of a closer integration of the two concepts which would allow for the formulation of a comprehensive conception of corporate human rights obligations. Such a conception should combine an extended focus on proactive company involvement in the protection and realization of human rights with certain legally binding obligations.

Ukraine shows some level of involvement into the global CSR and BHR discourses but further steps should be taken both to raise public awareness thereof and to give those discourses a national legal shape. In the field of CSR, the primary step would be introduction of mandatory non-financial disclosure in annual reports for large and public companies pursuant to Directive 2014/95/EU. In the field of BHR, one awaits for the publication of a National Action Plan. A pitfall to be avoided is, however, is a separate development of two discourses or even competition between them instead of mutually beneficial integration.

SUMMARY

The article deals with Corporate Social Responsibility (CSR) and Business and Human Rights (BHR) as closely related courses of global legal academic thought focused on companies engaging in responsible and socially beneficial activities. The author seeks to identify their common and distinctive features, to outline the perspective ways of their integration and to highlight their importance for the national legal doctrine in Ukraine.

In the CSR framework, the emphasis is on corporate decision-making, rather than on state regulation of companies' activities or their legal responsibility. CSR is considered to be a factor in the competitiveness of the enterprise. Instead, the BPL assesses corporate behavior in the light of universally accepted human rights standards enshrined in fundamental international treaties, and focuses more on

holding companies accountable for harm caused than positively recognizing the role companies can play in promoting and protecting human rights.

The author calls for a closer integration of the two concepts which would allow for the formulation of a comprehensive conception of corporate human rights obligations combining a focus on proactive company involvement in the protection and realization of human rights with certain legally binding obligations.

Ukraine shows some level of involvement into the global CSR and BHR discourses but further steps should be taken both to raise public awareness thereof and to give those discourses a national legal shape, namely, the introduction of mandatory non-financial disclosure in annual reports for large and public companies pursuant to Directive 2014/95/EU in the field of CSR and the publication of a National Action Plan in the field of BHR. A pitfall to be avoided is, however, is a separate development of two discourses or even competition between them instead of mutually beneficial integration. The author also highlights the potential of a national economic law doctrine in addressing the debate.

Key words: corporate social responsibility; business & human rights; United Nations Guiding Principles on Business & Human rights; Protect, Respect, Remedy; positive responsibility; negative responsibility.

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THE RIGHT OF CITIZENS TO ENVIRONMENTAL EDUCATION AS A FACTOR OF ENVIRONMENTALIZATION OF LEGISLATION ON EDUCATION IN UKRAINE

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INTRODUCTION

From the second half of the 20th century, the problems of environmental education and enlightment became the object of active attention of the international community, democratic society, scientific and educational community, religious organizations. There has been widespread awareness that environmental education is one of the most effective instruments for ensuring environmental safety. Environmental education, the goal of which is balanced, environmentally safe development of mankind and high level of environmental culture of all the social groups within society, has taken one of the first places among the environmental priorities of humanity.

The progressive achievement of the Ukrainian environmental and legal doctrine in this area is the enshrinement of right of citizens to environmental education as one of the environmental rights of citizens in Art. 9 of the Law of Ukraine 'On Environmental Protection' dated June 25, 1991. It is worth to nore that neither the Constitution of Ukraine in force at that moment nor the international legal documents on human rights included environmental rights in the system of human rights and citizen at that time. As prof. M.V. Krasnova suggested. such a progressive conflict of norms reflected in the Ukrainian domestic legislation was due to the necessity of determining the highest universal value of a person, protecting his life and health, and establishing a system of guarantees for the realization and protection of these rights[1].

An explicitly outlined list of internationally recognised environmental rights is still absent today. Although prospects of international legal

[1] Краснова М. В. Конституція України та екологічні права громадян. *Вісник Київського національного університету ім. Тараса Шевченка. Юридичні науки.* 2000. № 8. С. 12–13, 16.

consolidation of environmental rights exist. For example, the list of such rights is proposed in the Draft Principles on Human Rights and the Environment[2], developed and proposed by an international group of experts led by F. Ksentini at the UN Office in Geneva in 1994. The draft declaration is one of the first international instruments, which fully addressed the problem of relationship between human rights and environment. The document demonstrates that the principles of environmental and fundamental human rights include the right of everyone to a safe, healthy and environmentally friendly environment, clearly distinguishing the environmental spectrum of a wide range of human rights[3]. Among the list of human rights and freedoms in the environmental sphere, the document also provides the right of all people to education in the field of environment and human rights (para. 17).

The study of mechanisms for implementing and ensuring the environmental rights of citizens in the Ukrainian environmental and legal doctrine is traditionally given great attention. Issues of environmental rights of citizens in general, individual environmental rights, including some aspects of the right to environmental education, were analysed by the representatives of environmental law doctrine, such as V.I. Andreytsev[4], G.V. Anisimova[5], G.I. Balyuk[6], S.G. Gritskevich[7], N.R. Kobetska[8], M.V. Krasnova[9], E.V. Poznyak[10],

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[2] Draft Principles On Human Rights And The Environment, E/CN.4/Sub.2/1994/9, Annex I (1994). University of Minnesota Human Rights library. http://hrlibrary.umn.edu/instree/1994-dec.htm (дата звернення 10.06.2019).

[3] Офіційний сайт екологічної організації «Зелений порятунок». URL: http://www.greensalvation.org/old/Russian/Publish/10_rus/10_16.htm (дата звернення 10.06.2019).

[4]Андрейцев В. І. Екологічне право. Курс лекцій : навч. посібник для юрид. фак. вузів. К: Вентурі; 1996. С.13; Андрейцев В. І. Новації еколого-правової освіти в Україні. *Право України.* 1998. № 5. С. 44–50.

[5]Анісімова Г.В. Здійснення громадянами екологічних прав : автореф. дис. на здобуття наук. ступеня канд.юр.наук: 12.00.06. Харків: Національна юридична академія України ім. Ярослава Мудрого, 1996. С. 8–11.

[6]Балюк Г.І. Екологічне право України: Конспект лекцій у схемах (Загальна і Особлива частини) : Навч. посібник. К.: Юрінком Інтер, 2006. С. 21-23, 24-79; Балюк Г.І. Правове забезпечення екологічної складової сталого розвитку: проблеми законодавчого регулювання, створення екологічної столиці світу та удосконалення екологічної освіти в Україні. *Вісник Київського Національного університету імені Тараса Шевченка. Серія «Юридичні науки».* 2012. № 92. С. 12–13.

[7]Грицкевич С.Г. Конституційні екологічні права людини і громадянина та їх забезпечення органами внутрішніх справ : автореф. дис. … канд.. юрид. наук: 12.00.06. К.: КНУ ім. Тараса Шевченка, 2002. 24 с.

[8]Кобецька Н.Р. Екологічне право України : навч. посібник. К., 2007. С. 38–56.

A.A. Slepchenko[11] and some others. However, in spite of the considerable attention of scholars to the field of environmental rights, the urgent need to continue scientific research in the field of improving the legal principles of environmental education, taking into account the global trends in this field, still exists. It is necessary to create an effective social and legal mechanism of environmental education, which will include the necessary legislative basis, institutional and financial provision, and guarantee the general environmental education at the level of environmental imperative. In its turn, it will create the preconditions for increasing the effectiveness of legal mechanism in the field of environmental relations in general, which is today the global environmental interest, the interest of every person, society and the state.

Environmental interest underlies the provision of environmentally sound life of society and the state[12]. The initial, starting point of environmental interests and needs of ordinary people is the possibility to use environmentally friendly environment, live in environmentally safe environment, receive clean products, reliable information about them and reimbursement of damage caused by environmental violations[13]. The environmental rights and freedoms of person and citizen are directed exactly at satisfaction of environmental interests. Awareness and consideration of the priority of environmental interests should become guidelines for the activities of public authorities in all the spheres of public life[14].

The right to environmental education has a special place in the system of environmental rights of citizens, since its implementation is not directly aimed at the use of natural resources, environmental

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[9]Краснова М.В. Екологічні права та обов'язки громадян. Екологічне право України. Академічний курс : Підручник. К., 2005. С. 39–59; 197.

[10]Позняк Е.В. Культурна функція екологічного права: від декларативності до прийняття конкретних рішень. *Вісник Національної юридичної академії України імені Ярослава Мудрого*. 2012. № 3 (13). С. 210–215.

[11] Слепченко А.А. Забезпечення права на екологічну освіту громадян в Україні : монографія. Чернівці: Кондратьєв А.В., 2017. 188 с.

[12]Орлов М. Правове забезпечення реалізації екологічних інтересів – основа належної охорони довкілля і розвитку економіки України. *Право України.* 2001. № 1. С. 68–72.

[13]Грицкевич С. Екологічні права в системі конституційних прав людини і громадянина. *Право України*. 2001. № 8. С. 54–57.

[14]Краснова М. В. Конституція України та екологічні права громадян. *Вісник Київського національного університету ім. Тараса Шевченка. Юридичні науки.* 2000. № 8. С. 12–16; 20.

protection or the provision of environmental safety. The implementation of this right is actually implemented in educational relations and affects the environment indirectly, indirectly, through the formation of a system of environmental knowledge, environmental competence, environmental consciousness, environmental thinking and human culture. Therefore, the right to environmental education should be reflected not only in the environmental one, but also in educational legislation, which will create legal guarantees for its implementation. The legislation on education should be ecologizated.

In Ukraine at the scientific level it has been proved that ecologization of education is an important part of the modernization of educational system in the contemporary Ukrainian society. Through the ecologization of education, the emergence of a new paradigm of human-nature relations, the implementation of sustainable development, the adoption of values and norms of modern environmental culture, the formation of ecocentric consciousness, which should save society from an environmental catastrophe and help it to overcome existing environmental problems, actually occurs[15].

The logical consequence of awareness in the Ukrainian society of the need to legislatively support the increase of environmental knowledge was the consolidation of such a strategic direction for the development of education in Ukraine as ecologization in the National Strategy for the Development of Education in Ukraine until 2021, approved by the Decree of the President of Ukraine dated June 25, 2013[16].

The next important step on this path was adoption of the new Law of Ukraine 'On Education'[17] dated September 5, 2017. According ot Art. 6 of this Law, the principles of the state policy of Ukraine in the sphere of education and principles of educational activity, include the formation of a healthy lifestyle culture, environmental culture and a careful attitude towards the environment.

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[15] Большак Л.І. Екологізація освіти як соціальна потреба сучасного суспільства : автореф. дис. ... канд. філос. наук: 09.00.10 / Нац. пед. ун-т ім. М.П. Драгоманова. К., 2012. 20 с.

[16] Про Національну стратегію розвитку освіти в Україні на період до 2021 року: Указ Президента України. *Офіційний вісник України.* 2013. № 50. Ст. 1783.

[17] Про освіту: Закон України від 5 вересня 2017 р.. *Офіційний вісник України.* 2017. № 78. Ст. 2392.

1. Key Problems of Legal Regulation in the Sphere of Environmental Education in Ukraine

Problems of environmental education, which is a complex phenomenon of interdisciplinary nature, are studied within the limits of their subjects mainly by humanities and natural sciences: ecology, biology, philosophy, pedagogy, psychology, culturology. In particular, philosophy explores the world-view aspects of planetary ecological safety, and pays considerable attention to issues of environmental education. Representatives of this sphere point out that environmental education is one of the important directions of comprehension by society of the surrounding world. An important prerequisite for development of the system of environmental knowledge is the creation of a new environmental theory, i.e. metaecology, the central position of which is the concept of the inseparability of a living organism from environment of its existence, because 'without knowledge of the surrounding world, without awareness of the person and society of its place in the process of earthly and universal being none of the pressing problems of our time can not be solved properly'[18].

Currently, the common task of legal science, philosophy, pedagogy, ecology and other scientific branch is the development of interdisciplinary scientific and methodological principles, concepts, doctrines of environmental enlightment and environmentalization of education in general, harmonization of their content, goals, tasks, including the concept of education for sustainable development, for which the Ukraine took the course. Conclusions as a result of the mentioned development should become a scientific basis for the improvement of the corresponding environmental and legal doctrine. In this regard, M.M. Brinchuk noted that knowledge of social sciences on interaction of society and nature are an independent methodological basis for development of environmental law. In this context sectoral sciences will serve to substantiate the provisions of environmental law, taking into account the most general laws of development of nature, society, thinking, patterns of mass behavior of people[19].

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[18]Маца К.О. Роль екологічної освіти в формуванні нового наукового світобачення. *Людина і довкілля. Проблеми неоекології.* 2000. Вип. 1. С. 10–15.

[19]Бринчук М.М. Внешние методологические основания развития экологического права: закономерности развития природы, положения общественных наук о взаимодействии общества и природы, потенциал природы. *Экологическое право.* 2011. № 1. С. 5–6.

The positive consequence of increasing the attention of modern science to cross-sectoral research in the field of environmental education, culture and consciousness was the identification of a set of key issues, including legal ones, which impede progress in the development of this area. Today not only legal scholars recognize that the environmentalization of the modern system of education on a global scale requires qualitative legal regulation, the necessity of which is determined by the existence of a single social space on the planet, the space of a single nature (a system with numerous connections), which requires the inclusion of environmental content in all existing curricula[20]. The sphere of activity is crucial for the revitalization of environmental education and enlightment in Ukraine, the provision of appropriate legal forms of activity, the creation of a system of incentives and legal safeguards. However, the environmental law may not only guarantee its citizens, with its legal means, minimum level of environmental education for all citizens, since education is regulated by the legislation on education in Ukraine. These objective reasons gave rise to prof. V.I. Andreytsev refer the right to environmental education to a group of inter-branch environmental rights, i.e. those rights that are implemented on the inter-branch level[21].

It is precise grounds for conclusion that legal regulation of this sphere of relations in Ukraine is far from perfect. By this time, a special legislative act on environmental education in Ukraine has not been adopted. The most important problems of a conceptual nature have not been solved yet. For example, there is no legislative definition of the concept of environmental education, that leads to ambiguous understanding of the boundaries and features of this phenomenon, there is a substitution of these concepts of related, but not identical phenomena such as environmental education and enlightment, environmental culture, environmental information, which does not contribute to the effective implementation of these types of environmental activities.

A clear and unambiguous understanding of the terms, concepts that define the analysed sphere, is known to be an important prerequisite for

[20] Маркович Д.Ж. Глобализация и экологическое образование. *Социологические исследования.* 2001. №1. С. 17, 20–23.

[21] Андрейцев В.І. Екологічне право. Курс лекцій : навч. посібник для юрид. фак. вузів. К., 1996. С. 34.

the effectiveness of legal regulation in a particular area. A characteristic feature of environmental law doctrine is that the rapid development of research in the field of interaction between society and nature has brought to life many new phenomena and social relations. The Concept of Environmental Education in Ukraine[22] emphasized on the need for improvement, harmonization and standardization of terminology in the field of environmental knowledge as on one of the most important tasks in the field of the development of environmental education. Complexity and cross-sectoral nature of environmental sciences is one of the reasons for the existing diversity of understanding and interpretation of many concepts on which the environmental law doctrine is based and whose range continues to expand. The issues of the development of scientifically substantiated terminology do not lose their relevance and remain an important task of environmental and legal research, since the heterogeneity and contradictory approaches to definition of the concepts studied are an obstacle to improving the legal regulation of relations that arise in the field of environmental protection and environmental education as well.

Due to terminological uncertainty both in practice and doctrine, the term `environmental education` is often understood unreasonably widely, bearing in mind other phenomena in its legal nature such as environmental teaching, enlightment and propaganda, when environmental knowledge is provided in other forms, than training in educational institutions, as in lectures, clubs, institutions of the nature reserve fund, distribution of environmental information in libraries, mass media, etc. Sometimes environmental education refers even to advertising.

As noted above, current legislation of Ukraine still does not provide the concept of environmental education, enlightment and teaching are absent despite existing grounds for the future fixing of such terms. For example, in the draft law of Ukraine "On Environmental Education" dated October 16, 2002 submitted by the National Deputy of Ukraine O.M. Volkov[23], contained the following definition: ‘environmental

[22]Концепція екологічної освіти в Україні, затверджена Рішенням Колегії Міністерства освіти і науки України № 13/6-19 від 20 грудня 2001 р. *Інформаційний вісник. Вища освіта.* № 9. С. 50–61.

[23]Проект Закону України «Про екологічну освіту». URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=2309&skl=5 (дата звернення: 10.06.2017).

education is a continuous process of education, training, self-education and personality development, aimed at forming norms of moral behavior of people, their responsibility in relation to the environment, as well as the acquisition of special knowledge and practical skills in the field of environmental protection, environmental management and environmental safety'. In our opinion, this definition is too broad in content.

The Concept of Environmental Education in Ukraine proposes the following definition: 'environmental education, as a holistic cultural phenomenon, which includes the processes of education, upbringing, development of the person, should be directed towards the formation of environmental culture as an integral part of the system of national and social education of all the social groups of the population of Ukraine, including through environmental education provided by non-governmental environmental organizations, environmentalization of educational disciplines and training programs, as well as professional environmental training through basic environmental education'. This definition includes the education provided by public organizations, which are not subjects of educational activity under the legislation of Ukraine.

Examples of consolidating the definition of environmental education can be found in the legislation of some countries. For example, the Law of the Republic of Armenia 'On Environmental Education and Upbringing of the Population' dated December 17, 2001[24] establishes the following definition: 'environmental education is a continuous process aimed at transferring environmental knowledge to individuals and populations, on environmental education, rooting of environmental culture, on their correct and reasonable orientation, manifestation of abilities and formation of behavior in the field of nature conservation and nature management' (Art. 1).

The Law of the Republic of Azerbaijan 'On Environmental Education and Public Education'[25] dated January 10, 2002 stipulates that 'environmental education is a process of teaching and studying

[24]Об экологическом образовании и воспитании населения: Закон Республики Армения от 20 ноября 2001 г. Официальный сайт Национального Собрания Республики Армения. URL: http://www.parliament.am/legislation.php?sel=show&ID=1741&lang=rus# (дата звернення 10.06.2019)

[25]Об экологическом образовании и просвещении населения: Закон Азербайджанской Республики от 10 января 2002 г. URL: https://azertag.az/ru/xeber/ZAKON_AZERBAIDZHANSKOI_RESPUBLIKI__Ob_ekologicheskom_obrazovanii_i_prosveshchenii_naseleniya-988078 (дата звернення 10.06.2019)

norms, special knowledge, experience in the protection of the environment and the use of natural resources.' In accordance with Art. 1 of Law of the Republic of Tajikistan "On Environmental Education of the Population"[26] dated December 29, 2010, 'environmental education is a learning process aimed at obtaining environmental knowledge, training, enlightment in the spirit of environmental education, development of environmental culture, correct and reasonable orientation, manifestation of abilities and the formation of the proper behavior of individuals and the population in the field of nature conservation and nature management.'

The problem of legislative consolidation of the notion of environmental education was further complicated by the emergence of the notion of 'education for sustainable development' as a meaningful new type of education in the modern world. The subject of broad discussions was the correlation such phenomena as "environmental education" and "education for sustainable development" both at national and international levels. It is often suggested that environmental education is a prerequisite or foundation for the emergence of education for sustainable development, since purpose and direction of environmental education is fully consistent with the goals of the concept of sustainable development.

Today as a result of the efforts of the international community, education for sustainable development was divided into a separate cross-sectoral direction of international and regional cooperation and led to a significant increase of attention to environmental education activities. The leading role of environmental education on the path to sustainable development was recognized by the world community already in the 90`s of the 20th century[27]. As noted in the doctrine, environmentalization of the educational process is becoming more and more important not only as a priority element of the mechanism of environmental safety, but also as an integrative factor of education in general, which, in the context of sustainable development, defines the strategic goal and the

[26]Об экологическом образовании населения: Закон Республики Таджикистан от 29 декабря 2010 г. URL: http://energo-cis.ru/wyswyg/file/Zakon/Nacional/Tadghikistan/ob_ekologicheskom_obrazovanii_naseleniya.pdf (дата звернення 10.06.2019)

[27]Ибрагимов И.М. Основания экологического образования: философский анализ : автореф. дис. … канд. филос. наук: 09.00.08. М., 1998. С. 18.

leading directions of the latter[28]. Thus, there is growing interest in the problems of environmental education not only as of an independent direction of nature conservation, but also a structural element of education for sustainable development.

During the whole period of its existence Ukraine includes environmental education and enlightment in its state environmental policy. To a greater or lesser extent, the issue of environmental education was given attention in most of the political, legal, conceptual, legislative acts in the field of environmental relations. In particular, considerable attention was paid to the issues of environmental education in the Basic Directions of the State Policy of Ukraine in the Field of Environmental Protection, Utilization of Natural Resources and Ensuring Environmental Safety, approved by the regulation of the Verkhovna Rada of Ukraine on March 5, 1998[29].

At the moment, the main legislative act that establishes the conceptual foundations of state environmental policy in Ukraine is the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2020[30], approved by the Law of Ukraine dated December 21, 2010. This Law provides the development of environmental enlightment for sustainable development Ukraine, which is currently an important political and legal guarantee of the inclusion of educational aspects in the environmental policy of all levels in Ukraine. Taking into account the existing world and European trends, both external and internal policies of Ukraine in the field of environmental education should be based on international legal principles and become a priority area of the state's activity in the field of development of environmental relations in the modern and the future. One of the problems of further improving environmental education for sustainable development, as a strategic direction of state policy, is its

[28]Скиба Ю.А., Лазебна О.М., Скиба М.М. Зміст і структура екологічної освіти в контексті сталого розвитку. *Екологічний вісник*. 2011. № 5. С. 25, 28–29.

[29]Про затвердження Основних напрямів державної політики України у галузі охорони довкілля, використання природних ресурсів та забезпечення екологічної безпеки: постанова Верховної Ради України від 5 березня 1998 року. *Відомості Верховної Ради України.* 1998. № 38. Ст. 248.

[30]Про Основні засади (стратегію) державної екологічної політики України на період до 2020 року: Закон України від 21.12.2010. *Офіційний вісник України.* 2011. № 3. Ст. 158.

interdisciplinary nature, as it covers all the external, national, and regional fields of both educational and environmental policy.

2. Universal character of right to environmental education in the system of environmental rights of the citizens

In accordance with the established approaches in the theory of law, significant differences in the mechanism of the implementation of certain types of subjective rights exist due to their nature and content. While studying the peculiarities of realization of subjective rights V.V. Kopeichikov points out that the main reason for differences in the mechanism of realization of certain subjective rights lies in the object of administrative actions in the realization of citizens' rights, which is related to correct determination of correlation of interests of society and an individual, with the disposal of certain material goods and their transfer to the subject of law, with issues of the activities of certain state organizations (their staff, compentence, etc.)[31]. These factors explain the reasons for the differentiated approach to determining the mechanism for implementation of each type of subjective rights.

In its turn, the differences in the implementation mechanism take place also within the same type of subjective rights. Of course, this applies also to such kind of citizens' rights as environmental rights, in particular, the right to obtain environmental education, the mechanism of implementation of which depends on the level of the selected educational institution (in the case of formal environmental education), forms of education and other conditions. Different opinions are expressed in the special literature on this issue. For example, the mechanism for implementing the right to education is associated with the type of study chosen by a citizen, and with the total number of existing educational institutions and specialties in the country for which specialists are trained[32]. In any case, the fundamental legal basis for environmental education is the constitutional right of citizens to education. This means that the formal environmental education of Ukrainian citizens is received in educational institutions precisely in the exercise of their constitutional right to

[31]Копейчиков В.В. Реализация субъективных прав граждан. *Советское государство и право*. 1984. № 3. С. 13–18, 19.

[32] Панкевич І.М. Здійснення прав людини: проблеми обмежування (загальнотеоретичні аспекти) : автореф.... канд. юрид. наук: 12.00.01. Львівський національний ун-т ім. Івана Франка. Л., 2000. 19 с.

education. The right to environmental education is characterized by certain features, compared with the general right to education, and their coverage is an actual task of legal science.

Therefore, investigating the special place of the right to environmental education in the system of environmental rights of citizens, it is necessary to begin with the characteristics of the constitutional right to education. As you know, all constitutional rights are closely interconnected and interdependent. The realization of some constitutional rights and freedoms may serve as the basis for the realization of others. These provisions also apply to the right to education, since it is one of the necessary conditions for the comprehensive development of the individual, and its distinctive feature is the interrelation with other constitutional rights[33]. The right to education is the most important and necessary precondition for the implementation of many other constitutional rights. The right to education affects other constitutional rights of citizens, because the effective exercise of the right to work, the right to participate in the management of state affairs, entrepreneurship, information rights (so-called rights of the fourth generation) and many others necessitates the continuous improvement of educational level in accordance with the requirements of social development. The presence of a certain level of education in the subjects of implementation and provision of the rights of citizens can significantly improve the effectiveness of the implementation of law, the achievement of the ultimate goal, satisfaction of relevant interests. In some cases, the availability of appropriate education is a statutory condition for the exercise of certain rights. In such cases, the availability of relevant education becomes a legal fact for the emergence of relevant legal relationships.

In view of the above, one may conclude that the right to education is universal, owing to its security nature and the impact on the implementation of many other constitutional human and civil rights that most fully and objectively reflect the right to education in the system of constitutional human rights and citizen.

Taking into account the above-mentioned approaches to universality and guaranteeing the influence of the constitutional right to

[33]Орловский Ю. П. Конституционные гарантии права на образование в СССР. М.: Наука, 1986. С. 12.

education for the exercise of other rights, one can conclude that the special and universal role of the right to environmental education in the system of subjective environmental rights. It should be borne in mind that most environmental rights determine and influence the realization of each other, and ultimately all together guarantee the fundamental natural absolute human right, i.e. the right to environmental safety.

It is precisely on the guaranteeing role of environmental education in relation to other environmental rights that attention is often drawn to the doctrine of environmental law. Yu.S. Shemshuchenko refers education and culture to ideological guarantees for the implementation of all environmental rights[34]. In the early 90's of the 20th century S.O. Bogolyubov and O.S. Kolbasov noted that one of the components of guarantee of the right to 'proper environment' is to get citizens the right to environmental enlightment and upbringing[35]. This is confirmed by the conclusion that 'all environmental rights are derived from the right to environmental safety and in the process of its implementation provide it[36].' Environmental enlightment and upbringing is also considered as one of the forms of realization of the right of citizens to participate in the development and implementation of environmental measures in environmental law doctrine[37].

In addition, it is noted that environmental education directly affects the provision of the right to environmental information[38]. As prof. M.V. Krasnova noted, the right to environmental education is really closely linked to the right to obtain environmental information, because 'education, culture, and spirituality cannot exist without information that mediates knowledge gained through the announcement of relevant information about phenomena, objects, activities[39].' The right to environmental education and the right to environmental information are the most approximated ones in their content in the system of

[34]Шемшученко Ю.С. Правовые проблемы экологии. К.: Наук. думка, 1989. 25 с.

[35]Боголюбов С. А. Колбасов О. С. Закон об охране природы в СССР. Каким ему быть? Мнения и предложения ученых. М.: Юридическая литература, 1991. С. 27–28.

[36] Краснова М.В. Гарантії реалізації права громадян на екологічну інформацію : дис... канд. юрид. наук: 12.00.06. К., 1997. С. 18.

[37] Андрейцев В.І. Екологічне право. Курс лекцій : навч. посібник для юрид. фак. вузів. К., 1996. С. 43.

[38]Краснова М.В. Гарантії реалізації права громадян на екологічну інформацію : дис... канд. юрид. наук: 12.00.06. К., 1997. С. 45.

[39]Краснова М.В. Там само. С. 128.

environmental rights of citizens. Among the elements of the structure that causes such affinity, are the objects of these rights, i.e. environmental information and systematic environmental knowledge.

In our opinion, the right to environmental information may be considered as an element or competence within the subjective right to environmental education, since any educational information of an environmental nature will relate to the actual state of the environment or its objects, sources, factors, materials, substances, physical factors that affect the state of the environment and human health, environmental projections, plans, programs, state environmental policy, legislation on environmental protection the natural environment or other data, which by their legal nature are environmental information and are enshrined, as such, in Article 25 of the Law of Ukraine 'On Environmental Protection'. At the same time, it is important to realize that in the process of implementation these rights do not absorb one, since the purpose, legal procedures, the range of obligated actors, the legal basis and the consequences of their implementation contain significant differences that are legal criteria for their differentiation.

An essential feature of the right to environmental education, which determines its special place in the system of environmental rights of citizens, is its ability to be a prerequisite, a guarantee for the implementation of other environmental rights of citizens, as well as the fulfillment of their environmental obligations stipulated by the Constitution of Ukraine and sectoral environmental legislation. This conclusion is confirmed by the theoretical and legal provisions that any norm may be considered not only as an object of guarantee, but as a guarantee of other legal norms.

Consequently, the right to environmental education is interlinked with other environmental rights of citizens and may be considered as a guarantee or a condition for more effective implementation of some other environmental rights, such as the right to participate in the development and implementation of environmental protection measures, rational and integrated use the natural resources, the right to participate in the discussion and introduction of proposals for draft regulatory acts, materials for the placement, construction and reconstruction of objects that can negatively influence the state of the environment, making proposals to state authorities and local self-government bodies, legal entities involved in decision-making on these issues, the right to

participate in public hearings or open meetings on the impact of planned activities on the environment on stages of placement, design, construction and reconstruction of objects, the right to conduct a public environmental expert examination, etc.

In addition, the realization of the right to environmental education can be a guarantee of citizens' compliance with their constitutional and sectoral environmental responsibilities.

3. Legal aspects of environmentalization of educational relations

In the environmental law doctrine it was noted that citizens have special powers in relation to one or another environmental law, depending on the content of the law, the main competencies of its subjects, the range of objects. Therefore, the actual task of legal doctrine in solving the problem of environmental education is to clarify the range of legal relationships that arise when implementing the right to environmental education, as well as subjects, content, objects of this right.

As mentioned above, realization of the right to environmental education of citizens in Ukraine is carried out within the constitutional right to education in the branch legal relations with a certain educational institution. Depending on the place in the structure of education in Ukraine, as enshrined in Art. 29 of the Law of Ukraine ‘On Education’, legal relations in the field of education are legal relations in the field, respectively, preschool, general secondary, extracurricular, vocational and higher education (relations of formal education).

This is a complex legal relationship, since each party has several powers and correspondence to their responsibilities. Relationships that arise with regard to training are time-consuming, the duration of their duration depends on various factors, and first of all, from the normative term of education at a certain educational level, established by law.

The grounds for the emergence, change and termination of legal relations in the field of education are legal facts, as well as complexes of legal facts, which are understood as the totality of legal facts necessary and sufficient for the legal consequences established by law[40]. In particular, such legal facts and cases are the procedures for entry or renewal in an institution, transfer from one institution to another, from

[40] Красавчиков О.А. Гражданское правоотношение / Советское гражданское право: В 2 т. М.: Высшая школа, 1968. Т. 1. С. 92.

one form of study, a specialty, a direction of training or specialization to other, deductions from an educational institution. The procedure and conditions of admission, transfer, renewal to education are established by the legislation and local acts of educational institutions.

It should be noted that the legal fact that causes the actual exercise of the right to environmental education is the introduction into the educational process of the corresponding specialties, specializations, educational programs, degrees, directions of training or environmental disciplines (subjects, courses, lessons, classes, etc.) depending on the type and the level of the educational institution and the educational system. The form, content and scope of environmental education in educational institutions can be introduced both in the invariantional and variational parts of the educational process in accordance with educational standards, curricula, and various educational programs.

In our opinion, it is necessary to agree with the scientific proposals on the allocation of a special type of educational (or pedagogical) relations in the structure of educational legal relations. However, the question of the branch affiliation of the legal relationship, which consists of the study, is still debatable. In particular, along with the existence of constitutional, administrative, civil, labor, the existence of a separate group of special legal relationships, which form the core of the whole system of relations in the field of education, so-called educational-educational or pedagogical legal relationships.

Obvious specificity of educational (pedagogical) legal relationships gave grounds for formation of a separate branch of "educational law" within legal science. One of the first scholars who expressed the idea of recognizing an independent branch of "educational law" was G.O. Dorohova in 1985. Unlike to the USSR, at that time the term "educational right" was already widely used in other socialistic countries. In our time, the accelerated development of the education industry and relevant legislation, the emergence of new legal institutions, led to a return to scientific discussions about the nature and sectoral affiliation of the norms governing this area of relations. The issue of formation of educational law is also the subject of scientific discussion in Ukraine. Separate scholars support the earlier hypothesis about the existence of an independent branch of educational law. Strengthening scientific research on the separation of educational law in the legal system of Ukraine will be important both for further

improvement of the legal principles of environmental education and the reform of relations in the field of education in Ukraine as a whole. As Ukraine has declared in its conceptual political-legal documents the intention to implement environmental education, the modernization of education and the development of environmental education in the interests of sustainable development, educational law, as a branch of law, should become the basis for the real implementation of these provisions.

In our opinion, the range of social relations that are part of educational institutions is covered by the forms of educational process provided by the relevant sectoral legislation. For example, in the field of higher education, these are forms of educational process, which are established by Art. 50 of the Law of Ukraine 'On Higher Education', i.e. training sessions, independent work, practical training and control measures. These relations are central in the system of educational legal relations, which arise in relation to the reception of persons of education of the corresponding educational level, and it is exactly in these relations that the direct realization of the right of citizens to receive ecological education is carried out.

Educational and legal relations, as well as any other social relations, regulated by the rules of law, have their structure, the elements of which are the subjects, objects and content of such relations. As already mentioned, environmentalization should be present in all these elements.

Subjects (parties) of educational relations are educational institutions, pedagogical or scientific-pedagogical workers and persons studying. Tripartite character is considered to be a characteristic feature of the studied legal relations, since the actual educational and pedagogical relations that connect the teacher and the student can occur only with the participation of a comprehensive educational institution.[41]

The participants in educational and educational relations can be physical and legal persons, on the basis of which the state recognizes the ability to be the bearers of subjective rights and legal duties, in the field of education, giving them an appropriate legal personality.

[41] Тицька Я.О. Суб'єкти освітянських правовідносин. URL: http://legalactivity.com.ua/index.php?option=com_content&view=article&id=92%3A2011-10-04-23-17-59&catid=1%3A-1&Itemid=9&lang=ru (дата звернення 10.06.2019).

As for individuals who are carriers of subjective rights in the field of education, Article 53 of the Constitution of Ukraine, which establishes the right to education, uses the term "everyone", that is, the subjects of this right in Ukraine are all persons, regardless of nationality. For citizens of Ukraine an additional constitutional guarantee of the right to education is secured. It is free to receive it at state and municipal educational institutions, including on a competitive basis, depending on the level of education.

The specific scope of the personality of a person in educational relations can vary significantly depending on the level of education. At different ages there is the capacity of people to study at different levels of education. For example, the opportunity to study at pre-school educational institutions arises almost from birth, because as stipulated in Art. 4 of the Law of Ukraine ‘On Preschool Education’ the preschool age begins with the infant's period and ends with the age of 6 (7) years. At the same time, for other levels of education, age limits are not established by the current legislation both regarding the minimum age and the maximum age of the acquisition of the corresponding education. This means that the general legal personality in the field of education arises from the person from birth and terminates with death. This conclusion describes simultaneously the possibility of obtaining environmental education in primary schools, which is not limited to an individual's age and exists throughout his life.

In the current legislation of Ukraine, there are no regulations on the eligibility and capacity of citizens in the field of education, in particular, regarding their occurrence and termination, possible grounds and order of their restriction, which is apparently one of the gaps in the legal mechanism of the constitutional right to education, one from the elements of which is the right to environmental education. It should also be noted that educational personality and the totality of rights and obligations in this field together with other elements form the content of the branch legal status of a citizen in the field of education. In our opinion, the right to environmental education is an integral element of the educational and legal status of person and citizen in Ukraine.

Educational establishments of all forms of ownership, types and levels of accreditation of the educational system of Ukraine have a special legal personality, which, accordingly, determines their special legal status, implementation of which is carried out in the educational

and scientific spheres in order to provide conditions for obtaining persons who are studying, education of a certain educational, educational qualification level or degree. Thus, an educational institution is an entity created to ensure the implementation of the constitutional right of citizens to education, which takes place in the relevant legal relations. According to the results of licensing, attestation, accreditation, the Ministry of Education and Science of Ukraine, local authorities of education within the limits of their authority give educational institutions, regardless of the forms of ownership of the license, the right to carry out educational activities in accordance with state requirements, with the establishment of certain educational qualification levels of training, which correspond to personnel, scientific-methodical and logistical support, enter them in the state register of educational institutions of Ukraine.

One of the features of legal personality of a legal entity is the theory of law, which refers to the purpose of its creation, according to which a legal entity operates in a particular field. The objectives, tasks and directions of its activity may be determined by the legislation as determining the legal personality and legal status of an educational institution as a legal entity. For example, one of the main tasks of higher education institutions envisaged by Article 26 of the Law of Ukraine 'On Higher Education' is 'the formation of a personality through patriotic, legal, environmental education, the approval of participants in the educational process of moral values, social activity, civic attitude and responsibility, a healthy way life'. The appearance of the aforementioned norm in this law is nothing more than a manifestation of environmentalization of the educational sphere, namely of the content of the legal personality of higher educational institutions in Ukraine, and is an essential sign of changes in the social purpose of higher educational institutions in society.

When studying the legal aspects of environmental education, a significant interest from a legal point of view is the question of determining the objectrelations that arise in the field of environmental education, so the main focus in the analysis of these relations, we consider to focus on his discovery. After all, the very object of subjective law gives the answer to the question 'right to what?' provided by the legislation of the subject. As A.P. Dudin, 'legal norms establish the rights and responsibilities of the subjects of legal relations not 'in general', but in relation to a particular

object, about which there is one or another relationship'[42]. In our opinion, object reflects the specificity of relations in the field of environmental education in the most eminent way.

As is known, in the general theory of law objects of legal relations are recognized things, other tangible and intangible benefits, actions, results of actions, which are aimed at the activities of entities in the process of exercising their subjective rights and legal responsibilities; these objects are provided by the norms of law and connect the subjects in the legal relationship. The object of legal relationship should be fixed in such a quality at the legal and regulatory level.

At the scientific and doctrinal level, the issues of educational legal relations are not sufficiently investigated. In this regard, it should be noted that the decisive aspect of the subjective right to education is, for the most part, recognized 'the possibility of acquiring knowledge (or a certain amount of knowledge)', 'access to knowledge', 'improvement of knowledge', 'knowledge acquisition', etc. For example, the very essence of the constitutional right to education is understood as 'obtaining certain amounts of knowledge', and in relation to vocational training (including in a higher educational institution) – 'the amounts of knowledge, the quantitative and qualitative aspects of which vary, depend on the branch of economy, the future specialty'[43]. The concept of 'environmental education' is deeply connected with environmental knowledge.

Consequently, the transfer of a certain amount of knowledge is one in which the activities of those who study (pupils, students, cadets, etc.), as well as educational establishments, their structural subdivisions, and scientific and pedagogical workers are carried out. The foregoing gives us the basis for conclusion that as a result of the process of scientific knowledge, it is knowledge is a final destination of the actions of the subjects of educational legal relations, that 'unites subjects of rights and duties in relation' that is the object of educational and educational legal relations. According to the existing classifications of objects of legal relationship, such an object can be attributed to the results of actions (behavior) of subjects.

[42] Дудин А.П. Объект правоотношения (вопросы теории). Саратов: Изд-во Саратов. ун-та, 1980. С. 65.

[43] Дольникова Л.А. Право граждан на образование и организационно-правовые формы его обеспечения : Учеб. пособие. Уфа: Изд. Башк.ун-та., 1987. С. 26–27.

One of the approaches to defining the concept of ‘knowledge’ as a philosophical category is its understanding as the result of the process of knowledge[44], as ‘proven practice and logically confirmed result of the knowledge of reality, its correct reflection in human thinking[45]’, and not just as a system of certain educational information. Systemic and substantiated scientific knowledge is another essential feature that distinguishes scientific knowledge from the products of everyday cognitive activity of people[46]. This means that environmental knowledge, as an element of student consciousness and the object of legal relationship, must meet the criteria of scientific knowledge, that is, to be in scientific knowledge of its own nature. The criterion of "scientific" knowledge means its truth, authenticity, validity, and consistency. According to the Concept of Environmental Education of Ukraine, the formation of the very basic ecological knowledge is the main objective of environmental education. Indirect (general) object of these relations is environmentally safe, sustainable development of mankind, preservation of the natural environment and efficient use of natural resources for the benefit of present and future generations.

In our opinion, the concept of environmental knowledge as the object of legal relations in the field of education requires further research of its legal features and legal forms. In particular, one of the important signs of environmental knowledge is the requirements established by the legislation regarding their sources, as well as the forms of their objectification, which, in particular, may be standards of education, teaching and methodological documents, curricula and work programs, as well as textbooks, manuals and other educational editions, approved in accordance with the procedure established by law.

CONCLUSIONS

The main prerequisites for environmental education in Ukraine have become international, environmental and legal factors. International interest in the development of environmental education, active

[44] Савчук В., Сумятин В. О роли мнения, убеждения, веры в процесе познания. Сознание и знание. М.: Ин-т филос. АН СССР, 1984. С. 21–34.

[45] Бауер М.Й. Екологічні знання у контексті формування світоглядних цінностей суспільства : дис. на здоб. наук. ступ. канд. філос. наук : 09.00.09. К., 1998. 60 с.

[46] Введение в философию : Учебник для вузов. В 2 ч. Ч. 2. М.: Политиздат, 1989. С. 369.

international and regional cooperation in this field, which has been under way for nearly 100 years, undoubtedly has an impact on Ukraine, its society and law. The concept of the United Nations Organization in the field of environmental education, which is currently reorienting towards education for sustainable development, has been reflected in many political, legal and legislative acts of Ukraine.

Environmental prerequisites for environmental education have become scale environmental problems of the global, regional and local levels, which continue to aggravate and require a deeper awareness of the negative processes occurring on the planet, changes in the paradigm of human existence in order to save lives and health of people and the environment.

Legal preconditions for environmental education are the growing role of law in solving environmental problems, the emergence of environmental law and legislation, legal consolidation of environmental rights of citizens, as progressive, humanistic advances in legal thought, including the rights of citizens to obtain environmental education. Of particular importance are the problems of the development of environmental and legal education in the formation of the right to environmental safety, which is an indicator of the achievements of modern environmental and legal culture of society and the state. Legal issues that exist in the areas of environmental safety, environmental protection, efficient use of natural resources and the implementation of environmental rights of citizens are of crucial importance for a proper understanding of the system of environmental and legal norms in the consciousness of all citizens, and especially in the legal sense of the specialists who provide realization of the right. The urgent need for the development, support and improvement of environmental science and education, the environmentalization of law and legislation, as an integral part of the mechanism of environmental activities, should deepen the environmentalization of legal education.

The development of legal regulation of environmental education in Ukraine takes place in stages. The most important factor that resulted from this process was the legal consolidation of the citizens' right to receive environmental education as one of the environmental rights of citizens in 1991 Law of Ukraine "On Environmental Protection". Subsequently, issues of environmental education were included in most of the conceptual political and legal documents that define the basis and

direction of state environmental policy. The Ukrainian legislation on education is gradually being ecologically One of the most significant events was the inclusion of provisions for education in the interests of sustainable development into the new Law of Ukraine "On Education" dated September 5, 2017. In particular, the Preamble of this Law states that the purpose of education is the comprehensive development of man as an individual and the highest value of society, talents, intellectual, creative and physical abilities, formation of values and necessary for the successful self-realization of competences, education of responsible citizens, raising the educational level of citizens in order to ensure sustainable development country and its European choice. In addition, Article 5 on public policy in education states that financing education is an investment in human potential, sustainable development of society and the state.

An important step towards the environmentalization of higher education was the adoption of the Decision 'On Environmentalization of Higher Education of Ukraine with the Aim of Training Specialists for Sustainable Development' by the Board of the Ministry of Education and Science of Ukraine on November 27, 2015, in which the environmentalization of higher education was recognized as one of the priority directions of the Ministry of Education and Science of Ukraine and all educational institutions regardless of their subordination and forms of ownership (para. 2). In the above-mentioned decision, the scientific-methodical council of the Ministry of Education and Science of Ukraine and the National Agency for the Quality Assurance of Higher Education were recommended to include the environmental competence of a specialist in the list of general competencies during the development of methodological recommendations for the preparation of higher education standards (para. 3). In addition, rectors of higher education institutions are recommended to include an environmental component in the content of academic disciplines in all areas of knowledge (para. 10).

Thus, there is every reason to hope that the greening of sectoral educational legislation will continue and become a reliable legal guarantee for the effective exercise by citizens of their right to receive environmental education.

SUMMARY

The article is devoted to research of legal problems of environmentalization of education in Ukraine. The author considers the important legal precondition for environmentalization of the legislation on education in Ukraine the right of citizens to receive environmental education, which is enshrined in the Law of Ukraine "On Environmental Protection" of June 25, 1991. The main problems of legal regulation in the field of environmental education are analyzed, such as the absence of a special law, uncertainty with the basic terminology, the prevalence of acts of a recommendation nature that do not have binding legal force and do not directly regulate the influence on social relations.

Particular attention is paid to the right to environmental education due to the fact that it is universal one in the system of other environmental rights and environmental obligations of citizens. In particular, the presence of a subject of environmental education may be a prerequisite and affect the effectiveness of its implementation of many other environmental rights, and also be a guarantee of the fulfillment of their environmental requirements.

An indispensable legal guarantee of the implementation of the citizens' right to environmental education, the author believes environmentalization of the law on education in Ukraine, because it is precisely in specific educational legal relations with educational institutions citizens can receive environmental education. The environmental right and legislation can not directly influence the process by methods and means inherent in them. The author draws attention to the need to distinguish between such phenomena as environmental education, enlightment, propaganda, information, which are often unreasonably identified, although they have different legal nature and legal mechanisms for implementation.

It has been demonstrated how the environmentalization of educational legislation affects the content of certain elements of educational legal relations at various educational levels. Particular attention is paid to the characterization of environmental knowledge as the main subject of educational legal relations, as well as the prospects for the formation of educational law, which should become the legal basis for the development of environmental education and education for the sake of sustainable development in Ukraine.

Having outlining the main stages of environmentalization of the legislation on education in Ukraine, the author predicts that this process will continue, which will guarantee citizens the real exercise of their right to receive environmental education and ensure the observance of personal and public environmental interests, which consist in the effective and rational use of natural resources, protection of the environment and ensuring environmental safety for the benefit of present and future generations.

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CONSEPTUAL COMPETENCY MODEL OF LEADER (BY THE EXAMPLE OF NATIONAL POLICE OF UKRAINE AGENCIES)

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INTRODUCTION

Law-enforcement activity sets high requirements for the level of professionalism and professional workmanship of policemen. In leading documents of Ministry of internal affairs of Ukraine and National police, – incompetence is considered as unprofessionalism, the consequence of which is an increase of quantity of undiscovered criminal offences, the violation of policemen the discipline and legality, misfeasance, professional deformation of policemen, cases of deviant and adictive behavior. To avoid these negative phenomena there should be the systems modernization, for instance professional and psychological assortment, professional development, training of specialists, policemen certification.

Nowadays realities show that agencies and departments of National police of Ukraine, as never before require highly qualified and competent leaders of different ranks.

According to the it. 5 art. 21 of Ukrainian Law «On National police» «…As a leader and deputies chief may be assigned a person that[1]:

1) corresponds to general conditions of police service entrance,
2) has full high juridical education,
3) has length of work in law branch no less than seven years,
4) has experience in executive position no less than five years…».

However, as it is known, even corresponding to these items, a person can`t fulfill successfully managerial functions. It is, first of all, connected with:

1. Assignment on leading position incompetent specialists. It causes the decline of the productivity of subordinate agencies activity

[1] Про Національну поліцію: Закон України від 02.07.2015 № 580-VIII. URL: https://zakon.rada.gov.ua/laws/card/580-19 (дата звернення 11.02.2019).

and departments that in it`s turn influences on level of population`s confidence to police.

2. Imperfection of regulating the activity of the leaders of certain departments (subdepartments, offices, sectors) of National police. Thus, in National police there are some department (subdepartment, office, sector), that don't have precise regulation of their activity.

3. Imperfection of organizational and methodical provision of professional and psychological assortment of candidates for a managing position. Nowadays, in practice of professional and psychological assortment there are variety of test methods that are directed on candidates assortment for a managing position, by means of learning their professionally important qualities, style of leadership. Only learning the level of development all informative compound components of candidate competence varieties on managing position leaves outside the attention of specialists.

So, the goal of our research is to elaborate the general competency model of the leader of National police of Ukraine agencies. The tasks of research:

– learning and analysis of regulative acts, that provide the activity of National police of Ukraine, for separating general functions the leaders of National police of Ukraine;

– elaboration of general conceptual competence model the leader of National police of Ukraine on the grounds of separated functions of National police of Ukraine leaders;

– clarification the content of definition communicative competency, psychological competency, conflict competency, managerial competency, law competency, information and technological competency, economic competency, organization competency, strategy and prognostic competency, pedagogic competency, autopsychologic competency, general-culture competency, health-saving competency;

– carring out the questioning of leadership team of National police of Ukraine for expert estimation of necessary level of development the meaningful components of the leader`s competence varieties;

– the substantiation of prospective directions of professionally psychological assortment of candidates on leadership job, improvement of professional skills and certification.

During the process of theoretical-applied scientific research there were used the complex of methods. Thus, with the use of general-logical

(analysis, syntheses, induction, deduction, scientific abstraction, generalization, analogy, modelling, classification) and general-theoretical (formalization, axiomatization, hypothetically-deductive) methods it was:

a) improved the content of principal definitions of competences variations;

b) classified the functions of leaders of National police of Ukraine;

c) developed general conceptual competence model of leader of National police of Ukraine;

d) developed a questionnaire for expert research the stage of progress for each of competence variation.

With the aid of questioning methods (survey, questionnaire) there was carried out the questionnaire of leadership team of National police of Ukraine to disclose the necessary stage of development the varieties of leader`s competences.

By means of mathematic methods (calculation, registration, rank (-order) estimate) it was:

a) carried out the calculation of anonymous questioning of leaders of National police of Ukraine;

b) realized the indexes ranking. By the agency empiric methods (comparison, description) there were presented the principal results of scientific research.

This research was carried out on bases of Chief departments of National police of Ukraine in Odeska, Mikolaivska, Vinnitska, Hmelnitska, Chernivetska oblasts. The total quantity of participants is 437 leaders of different departments, (subdepartments, offices, sectors) of National police of Ukraine.

1. The Results of Theoretical Research

The strategic tasks of reformation the departmental education is renovation the content of education of higher education institutions with specific conditions of education of Ministry on internal affairs of Ukraine by means of it`s approximation to the requirements of practical activity, creation the efficient mechanism of transformation the educational services from quantitative indexes to qualitative ones. It is precisely competence approach to the education that will provide the reformation of departmental education.

«Competence approach» means directivity of educational process on forming and development of key (basic, principal) and subject competencies of personality. The result of such process will be the forming of general personal competence that is a collection of key competences, integrated characteristic of personality. Such characteristic must be formed during the process of education and contains knowledge, capabilities, attitude, the experience of activity and behavioral models of personality[2].

It is necessary to emphasize that the scientist of our country (I.A. Zimniaia, 2003, O.V. Ovcharuk, 2004, A.V. Hutorskiy, 2003, O.M. Tsilmak, 2011 etc.) and foreign ones (J.H. Holland, K.J. Holyoak, R.E. Nisbett, P.R. Thagard, 1986; R.S. Mansfield, 1996, L.M. Spencer, 1994, D.C. Rychen etc.) focused on the issue of personal competency.

The determination of competency as general ability, that is based on knowledge, experience, values, tendencies, acquired by means of education were devoted the scientific works of: A.L. Anreeva, N. Bratash, S. Bondar, E.V. Bondarevskaya, P.P. Borisova, B.A. Bolotova, G.Y. Voytko, V.V. Serikova, S.V. Kulkevicha etc. But, among these works there weren`t scientific works, that concerned general competency model of the leader of National police of Ukraine.

It is necessary to accentuate that the scientists often use words «competency» and «competence» as synonyms in their works, although these terms have different meanings. In our opinion a[3]: 1) «competence» – it is:

a) a range of authorities of any organization,

b) a range of functional authorities of a specialist;

2) «competency» – it is an ability of a person to fulfill certain activity successfully.

Competence is not a substantive scientific category, it`s determined by interdependent professionally important components such as: knowledge, abilities, skills, qualities, capabilities, motivation, world outlook and professionally-psychological readiness. The mentioned

[2] Компетентнісний підхід у сучасній освіті : світовий досвід та українські перспективи / заг. ред. Овчарук О.В. Київ: К.І.С., 2004. 112 с.

[3] Цільмак О.М. Складові управлінської компетентності керівника органу досудового розслідування Національної поліції України. *Юридична психологія.* 2017. № 2 (21). С. 74–85. URL: http://elar.naiau.kiev.ua/jspui/bitstream/123456789/2805/1/2-1.pdf

components is based on such evaluative component as the level of competency development (type, kind, subvariety). Competency is an integral and dynamic personal category, that depends on conditions and peculiarities of labor. That`s why, with the change of methods, means and forms of professional activity the competency needs improvement.

The leader of a department (subdepartment, office, sector) of National police of Ukraine for inferiors is a key central figure that should be a model, mentor that leads, inspires on selfless labor and provides the raising of everyone`s professionalism. The leader should not only fulfill professional functions successfully but to know perfectly the content of inferiors` professional activity.

The activity of leaders of bodies and departments of National police of Ukraine is based on some legal act – Constitution of Ukraine, The Law of Ukraine «On National police» and other laws, decrees of Verkhovna Rada of Ukraine and Cabinet of Ministers; orders of Ministry of internal affairs and National police etc. To determine what varieties of competency inherent in leader of one or another department (subdepartment, office, sector) of National police it is necessary to identify precisely what functions must he fulfill. Thus, to determine general conceptual competency model of the leader on National police of Ukraine we with the point of managerial functions analyzed legal acts, that are general for all policemen, including leaders. According to profound analysis of these norms, it was defined that the leaders of National police fulfill many different functions among which it is necessary to distinguish:

1) *organizational function*, that provides:

a) organization of the activity of subordinate department (subdepartment, office, sector) according to certain directions;

b) organization of interaction between departments (subdepartments, offices, sectors);

c) organization of cooperation between the workers of subordinate staff;

d) organization of commissions, work and expert group job;

e) organization of partner interrelation with a population;

f) organization of cooperation with a population etc.;

2) *administrative function,* that provides:

a) distribution of duties between inferiors;

b) giving a commission within authorities;

c) making administrative decisions;

d) preparation and signing of orders, directions, regulations, assignments;

e) candidates assortment on a position etc.

3) *control function,* that provides a control for:

a) fulfilment of inferiors the requirements of legal acts, that regulate their activity;

b) fulfilment of inferiors certain tasks and assignments;

c) results of inferiors activity;

d) moral and psychological statue within the staff etc.

4) *communicative function*, that provides:

a) information exchange between Ministry of internal affairs of Ukraine and policeman;

b) information exchange between departments (subdepartments, offices, sectors);

c) information exchange between the workers of subordinate staff;

d) administration of subordinate department (subdepartment, office) by means of giving the orders, directions, regulations, assignments, recommendations;

e) process of the information acquisition from the subjects of defense and accusation;

f) current of professional conversation during citizens reception etc.;

5) *motivational-objective function*, that provides:

a) motivation of staff;

b) inferiors aiming to the effective result;

c) process of creation the system of conditions that guide the acts of inferiors in necessary direction for achieving a goal;

d) material and moral stimulation of inferiors by means of their incentive, or bringing to disciplinary responsibility etc.;

6) *plan-prognostic function*, that provides:

a) planning of the activity of subordinate department;

b) prediction of the possibility of certain risks;

c) raising of quality and efficiency of the activity of subordinate department (subdepartment, office, sector);

d) process of prediction the probable statue of an object, phenomenon, process for a certain moment of period of time (in past or future);

e) creation the perspectives of development of subordinate department (subdepartment, office) etc.;

7) *informational-analytical function* that provides a collection, processing, generalization, systematization, analysis and evaluation of information to:

a) raise the efficiency and effectiveness of activity of subordinate department (subdepartment, office);

b) planning of subordinate department (subdepartment, office) activity;

c) make the administrative decisions;

d) prevent the negative consequences etc.

8) *prophylactic function*, that provides:

a) prevention of loses among the staff;

b) suicides prophylaxis among the inferiors;

c) prophylaxis of aditive addiction;

d) prophylaxis of destructive onset;

e) corruption prevention;

f) prevention the conflict interrelation between inferiors and the subject of professional activity etc.;

9) *technological function*, that provides:

a) a) modernization of professional activity;

b) upgrading of technical means and methods;

c) renovation of software etc.;

10) *economical function*, that provides:

a) objective learning of material resources;

b) frugal attitude to material-technical equipment;

c) saving material resources etc.;

According to the content of the norms of legal acts, that regulate the activity of National police and also on the grounds of distinguished functions of the leader we consider necessary to prove general conceptual competency model of the leader of department (subdepartment, office, sector) of National police. It is necessary to denote that managerial activity of the leader is directed to:

a) activity (that is it concerns planning, organization and assuring of professional activity);

b) society (that is it may concern inferiors, subjects of professional activity, citizens, workers of other departments (subdepartments, offices, sectors);

c) oneself (that is setting on result of managerial activity, control of own emotions, statues, processes etc.).

So, to manage a staff psychologically correctly, rationally, productively, effectively and successfully the leader of the department (subdepartment, office, sector) should develop such varieties of competency as:

1. ***Social direction***:

1) *communicative competency* (the ability of a person to realize communicative interaction, to establish and support necessary contacts with other people[4]) – comprises communicative and administrative functions;

2) *psychological competency* (the ability of a person psychologically correctly, rationally, productively and effectively administrate, taking into consideration all psychological peculiarities and qualities) – comprises all above-mentioned functions.

3) *conflict competency* (the ability of a person to solve the interindividual conflicts rationally, productively, and effectively) – comprises organizational, administrative, prophylactic, communicative, planning-prognostic, motivation-objective, controlling, informational-analytic functions.

2. ***Activity direction:***

1) *managerial competency* (the ability of a person psychologically correctly, rationally, productively and effectively fulfill managerial activity) – comprises planning-prognostic, organizational, controlling functions;

2) *legal competency* (the ability of a person to the legal behavior and activity, that is to identify during the process of vital activity the legal awareness and not to break the prescriptions of legal acts) – comprises all above-mentioned functions;

3) *informational-technological competency* (the ability of a person to apply and use modern innovative technologies[5]) – comprises planning-prognostic, organizational, informational-analytic, techno-logical, economical functions;

[4] Цільмак О.М. Професіогенез компетентності фахівців кримінальної міліції: теорія та практика : монографія. Одеса: РВВ ОДУВС, 2011. 432 с.

[5] Там само.

4) *economical competency* (the ability of a person to orientate in new market`s conditions, to adapt effectively to them and apply economical methods of management) – comprises all above-mentioned functions;

5) *organizational competency* (the ability of a person to organize his own professional activity and the activity of inferiors) – comprises organizational, managerial, communicative, planning-prognostic, motivation-objective, controlling functions;

6) *strategic-prognostic competency* (the ability of a person to determine the priority directions of development of subordinate staff for achievement supplied goals, to predict probable perspectives and possible risks) – comprises all above-mentioned functions;

7) *pedagogic competency* (the ability of a person to teach and educate inferiors rationally, productively and effectively) – comprises all above-mentioned functions.

3. ***Personal direction:***

1) *autopsychologic competency* (it is an ability to cognate oneself, one`s image «I»), by means of self-observation, self-diagnosis, adequate self-assessment, and self-consciousness[6]) – comprises motivation-objective, psychological, prophylactic, informational-analytic functions. It is necessary to distinguish such subtypes of autopsychologic competency[7]:

* *intrapsychologic* (lat. «intra» – in+gr. «psyche» – soul) – it is an ability of a person to understand himself;

* *intraperceptive* (lat «intra» – in+lat. «perception» – imagination, reception) – it is an ability to understand one`s adequate;

2) *general-culture competency* (an ability of a person to keep certain generally accepted rules of behavior culture) – comprises motivation-objective, psychological, prophylactic, informational-analytic, communicative functions;

3) *health-saving competency* (an ability of a person to keep the fundaments of healthy lifestyle and rules of safe behavior in all areas of vital activity) comprises motivation-objective, psychological, prophylactic, informational-analytic functions.

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[6] Цільмак О.М. Професіогенез компетентності фахівців кримінальної міліції: теорія та практика : монографія. Одеса: РВВ ОДУВС, 2011. 432 с.

[7] Ibidem.

Thus, general conceptual competency model of the reader of department (subdepartment, office, sector) of National police includes three interrelated principal types of competences (personal, social and activity), that are determined by certain kinds:

1) activity – managerial, legal, informational-technological, economical, organizational, strategic-prognostic, pedagogical;

2) social – communicative, psychological, conflict;

3) personal – autopsychologic (intrapsychologic and intraperceptive) general-culture, health-saving.

Every of these varieties of competency of the leader of department (subdepartment, office, sector) of National police determines interrelated and interdependent professionally important components: knowledge, abilities, skills, habits, qualities, capabilities, motivation, world outlook and professionally-psychological readiness. To determine the range of development different varieties of leader`s competency it is necessary to estimate the level of development it`s containing compound components.

Containing compound components of mentioned-above varieties of competency of the leader that or other department (subdepartment, office, sector) of National police must become criteria for professionally-psychological assortment and certification.

So, the verification of constructed general competency model of the leader of National police by means of it`s expert evaluation of containing compound components is very relevant.

2. The Results of Empiric Research

According to the proved general conceptual competence model of the leader of National police, there were determined main containing compound components of the competency of this model, a questionnaire was created and a questioning of 437 leaders of different departments, subdepartments, offices on National police of Ukraine was carried out.

It was proposed to the respondents – to realize the expert estimation about necessary level of development the containing compound component of competency varieties (high, medium, low), that are necessary for successful managerial activity of the leader of National police.

As a result of total expert estimations the containing compound components that or other variety of competency we calculated it`s average indexes and determined standard general competence profile of the leader of National police. So in respondent`s point of view:

1) *communicative competency* should have high level of development – 92 % respondents pointed like that (401 persons);

2) *psychological competency* should have high level of development – 96 % respondents pointed like that (419 persons);

3) conflict competency should have high level of development – 98 % respondents pointed like that (430 persons);

4) managerial competency should have high level of development – 100 % respondents pointed like that (437 persons);

5) legal competency should have high level of development – 100 % respondents pointed like that (437 persons);

6) informational-technological competency should have high level of development – 91 % respondents pointed like that (397 persons);

7) economical competency should have medium level of development – 68 % respondents pointed like that (297 persons);

8) organizational competency should have high level of development – 100 % respondents pointed like that (437 persons);

9) strategic-prognostic competency should have high level of development – 94 % respondents pointed like that (412 persons);

10) pedagogical competency should have medium level of development – 81 % respondents pointed like that (354 persons);

11) autopsychologic competency should have high level of development – 81 % respondents pointed like that (353 persons);

12) general-cultural competency should have high level of development – 88 % respondents pointed like that (386 persons);

13) life-saving competency should have medium level of development – 86 % respondents pointed like that (376 persons).

Thus, in respondents point of view in the leaders of National police all varieties of competences should have high level of development, beside economical, health-saving and pedagogical these ones should have medium level of development.

Mentioned-above general competency profile of the leader of National police is standard. The research that was carried out proved the general conceptual competency model of the leader of National police, that was created by us based on distinguished functions from legal acts.

However, the model that was mentioned above is experimental and standard, based on which and according to which – it is necessary to:

1. Concretize the content of professionally important components (knowledge, abilities, skills, habits, qualities, capabilities, motivation,

world outlook and professionally-psychological readiness) of all varieties of the leader`s competencies of certain department (subdepartment, office, sector) according to the requirements of legal acts, that regulate the activity of National police.

2. Provide the questionnaires for expert evaluation of necessary level of development of containing compound components of competences varieties in the leader of certain department (subdepartment, office, sector).

3. Carry out the questioning of the leaders of certain department (subdepartment, office, sector) of National police of Ukraine.

4. Handle the questionnaires by means of mathematical statistic methods. Take into consideration general average indexes of necessary level of development:

1) knowledge, abilities, skills, habits, qualities, capabilities, motivation, world outlook and professionally-psychological readiness of each variety of the leader`s competency; and also

2) every variety of leader`s competency.

5. Construct competency profile of the leader of certain department (subdepartment, office, sector), that will become a standard for professionally-psychological assortment of candidates on leading position.

6. Create «Card of leader`s competence profile» of certain departments (subdepartments, offices, sectors) and implement it in personnel departments of National police.

3. Discussion of Results

Thus, general conceptual competence model of the leader of the department of National police was proposed by us for the first time. The results of carried out research proved our hypothesis about managerial competency of the leader[8].

It is necessary to mention, that to implement the competency approach in the system of Ministry of internal affairs there must be a reorientation on personal-social-activity competence approach processes of:

[8] Цільмак О.М. Складові управлінської компетентності керівника органу досудового розслідування Національної поліції України. *Юридична психологія.* 2017. № 2 (21). С. 74–85. URL: http://elar.naiau.kiev.ua/jspui/bitstream/123456789/2805/1/2-1.pdf

1) advance training of policemen;
2) policemen certification;
3) professionally-psychological assortment of;
a) the candidates police service;
b) the candidates on policemen position;
c) the candidates on study in higher education institutions with specified conditions of education of Ministry of internal affairs of Ukraine;
d) policemen – the candidates for transition or career promotion;
e) policemen – candidates on leading position etc.;
4) cadets and listeners training in higher education institutions with specified conditions of education of Ministry of internal affairs of Ukraine.

It is necessary to emphasize, that proper professionally important level of leader`s competency one or another department (subdepartment, office, sector) of National police is a guarantee of successful professional activity a subordinate staff. That`s why the processes of training, advance training, professionally-psychological assortment and certification of candidates on leading position and the leaders of certain departments (subdepartments, offices, sectors) of National police should be reoriented into personal-social-activity competency approach.

The processes of training, professional development, professionally-psychological assortment and certification of policemen of certain departments (subdepartments, offices, sectors) of National police have certain goal. So, the goal of the training of policemen, the candidates on leading position of certain departments (subdepartments, offices, sectors) of National police is the development and forming of their containing compound components of the competencies varieties, by means of complex learning the necessary knowledge, skills, and abilities and also the methods, means and forms of practical activity.

The result of the training must be – the formed ability and professionally-psychological readiness of the person to the successful managerial activity.

The goal of the professional development of the leader of certain departments (subdepartments, offices, sectors) of National police – is the improvement of certain varieties of competences (that don`t have enough level of development).

The result of the professional development must be – the correspondence of the level of development of the containing compound components of the competencies varieties to their standard.

The goal of the professionally – psychological assortment of the policemen, the candidates on the leading position of certain department (subdepartment, office, sector) of National police is a determination of the level of development of professionally important varieties of competences.

The result of the professionally – psychological assortment of the candidates on the leading position must be – a assortment on leading position the most effective, successful, competitive and competent specialists.

During the process of – psychological assortment of the candidates on the leading position, – to study the level of development of all containing compound components of the competencies varieties of the candidates on the position of the leader of certain department (subdepartment, office, sector). The results of estimation that were received should be brought in «Card of leader`s competency profile».

Thus, for example, for expert evaluation of the degree of knowledge of the candidate – it is possible to provide the verification of his degree of knowledge by means of tests, and situational tasks. The abilities, skills, qualities, capabilities, motivation, world outlook and professionally-psychological readiness should be checked and estimated during the fulfillment the certain instructions and tasks by the candidates. Professionally important qualities of the candidate on the leading position should be determined by means of the battery of psychodiagnostic methods and observation.

For making a decision about appointment it is necessary to compare competency profile of the candidate with a standard competency profile of the leader of certain department (subdepartment, office, sector). Thus, if a person, for example, has insufficient level of formation certain knowledge or abilities, but his candidacy is the most acceptable for appointment, that person should be directed to the professional development courses. On professional development courses the candidate should be provided with deficient knowledge and abilities. After passing the courses the level of forming in candidates one or that containing compound components of the competencies varieties should be checked and previous and current marks should be compared.

According to the results of repeated learning the final decision about appointment of the candidate on the leading position should be made.

It is offered to carry out the psychological and pedagogic maintenance of the junior leaders activity (no less than one year). If necessary, they should be directed to the professional development courses (no often than once a year).

The goal of the leader`s certification of the certain department (subdepartment, office, sector) of National police is the determination the level of professionally-psychological correspondence of the leader to the current position.

The results of leaders` certification must be a decision about:

a) promotion (demotion) in qualification category of the leader;
b) promotion the qualification of the leader;
c) promotion (demotion) of the official rate of pay;
d) leader`s award;
e) transition to the other equivalent position with less job content etc.

In the USA the interval between leaders` certification is one year. It is necessary to denote, that to take vacant position – the leader of certain department (subdepartment, office, sector) of National police there should be announced a vacancy of carried out a certification. During these processes the level of «professional competency, personal qualities and achievements of the candidates…» are taken into consideration (it. 2., ar.. 52[9]).

«…To provide transparent assortment (announcement a vacancy) and promotion the policemen on the grounds of objective evaluation of professional level and personal qualities of each policeman, their correspondence to the position, determination the perspective of service usage in police agencies the constant police commissions are established…» (it. 1, ar.. 51[10]). Only the evaluation of professional level provides the learning of the level of the policeman`s competency.

Henceforth, the implementation of competency approach in the system of the Ministry of internal affairs of Ukraine will provide the growth the level of the professionalism and professional craftsmanship

[9] Про Національну поліцію: Закон України від 02.07.2015 № 580-VIII. URL: https://zakon.rada.gov.ua/laws/card/580-19 (дата звернення 11.02.2019).

[10] Ibidem.

of policemen, and will make a provision the successfulness and the quality of the professional activity and gradually will increase the level of belief of the population to the police.

CONCLUSIONS

1. On the basis of the analysis of the legal acts that regulate the activity of the National police of Ukraine, there were distinguished general functions of the leaders (organizational, administrative, prophylactic, communicative, planning-prognostic, motivation-objective, controlling, informational-analytic, technological, economical). Based on distinguished general functions there was created the standard general conceptual competence model of the leader on National police of Ukraine.

2. General conceptual competency model of the leader on National police of Ukraine comprises three interrelated key types of competency – personal, social and activity, that are determined and provided by the communicative, psychological, conflict competences; activity – by the managerial, legal, informational-technological, economical, organizational, strategic-prognostic, pedagogical; and personal – by authopsychologic (intrapsychologic and intraperceptive), general-culture and health-saving.

3. For better understanding the essence of the competences` varieties (communicative, psychological, conflict, managerial, legal, informational-technological, economical, organizational, strategic-prognostic, pedagogical, authopsychologic, general-culture and health-saving we specified their interpretation.

4. Having based on the questioning of the managerial personnel of National police of Ukraine, there were established the necessary level of development of the leader`s on National police competence varieties. It was determined that in the leaders all of the competence varieties should have the high level of development, besides economical, health-saving and pedagogical – they should have the medium level of development. It was mentioned, that during candidate's assortment on the leading position it is necessary to take into consideration not only the principal style of management and availability the leader qualities in the candidate on the leading position, but the level of development the competences varieties.

5. It was emphasized, that nowadays it is very relevant and important to:

a) work out and prove the conceptual and competency models of the leaders of certain departments (subdepartments, offices, sectors) of National police of Ukraine;

b) determine substantially the containing compound components (knowledge, abilities, skills, qualities, capabilities, motivation, world outlook and professionally-psychological readiness for managerial activity) of the competency varieties according to the requirements of legal acts, that regulate the activity of the leader one or another department (subdepartment, office, sector) and those functions, that are assigned to him;

c) provide an expert estimation of the necessary level of development of containing compound components of competency varieties;

d) construct of standard competency profiles of the leaders one or another department (subdepartment, office, sector);

e) design «Card of leader`s competency profile».

SUMMARY

Agencies and departments of National police of Ukraine, as never requires highly qualified, competitive, and competent managerial staff. On the basis of the analysis of the legal acts that regulate the activity of the National police of Ukraine, there were distinguished general functions of the leaders (organizational, administrative, prophylactic, communicative, planning-prognostic, motivation-objective, controlling, informational-analytic, technological, economical). Based on distinguished general functions there was created the standard general conceptual competence model of the leader on National police of Ukraine. General conceptual competency model of the leader on National police of Ukraine comprises three interrelated key types of competency – personal, social and activity, that are determined and provided by the communicative, psychological, conflict competences; activity – by the managerial, legal, informational-technological, economical, organizational, strategic-prognostic, pedagogical; and personal – by authopsychologic (intrapsychologic and intraperceptive), general-culture and health-saving.

For better understanding the essence of the competences` varieties (communicative, psychological, conflict, managerial, legal, informational-technological, economical, organizational, strategic-prognostic,

pedagogical, authopsychologic, general-culture and health-saving we specified their interpretation.

Having based on the questioning of the managerial personnel of National police of Ukraine, there were established the necessary level of development of the leader`s on National police competence varieties. It was determined that in the leaders all of the competence varieties should have the high level of development, besides economical, health-saving and pedagogical – they should have the medium level of development. It was mentioned, that during candidate's assortment on the leading position it is necessary to take into consideration not only the principal style of management and availability the leader qualities in the candidate on the leading position, but the level of development the competences varieties.

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INFORMATION DELICTOLOGY, AS A NEW LEGAL SCIENCE: ISSUES OF THE PRINCIPAL SENSE-MAKING ELEMENTS FORMATION

Zaiarnyi O. A.

INTRODUCTION

Scientific rationale of self-consistency of information delicts pertaining to unlawful acts committed by the participants of information relations, the existence of the wide range of causes and conditions conducive to the commitment of that category of delicts, as well as the need for approval and implementation of specific programs for the prevention of information statutory violations at the state level have led to the actualization of theoretical basis formulation of a complex legal science able to cover the above mentioned issues within its research.

Information delictology has become the legal science with subject-functional properties ensuring the performance of corresponding tasks in various areas of information activity.

1. Definition of Information Delictology as a Science

Currently, there is no uniform knowledge of the essence of information delictology as a science in legal literature.

Y. Maksymenko suggests the definition of that legal science as the following: "The body of knowledge of information delicts and tortness as a large-scale negative information and legal phenomenon containing the determinants of the delinquent's unlawful conduct and personality with the purpose of developing and applying of adequate measures aimed to counteract information violations"[1].

In his definition of information delictology through the prism of "legal delictology in information law", V. Tsymbaliuk characterizes the first of those concepts as the complex academic discipline equal to the

[1] Максименко Ю. Є. Інформаційна деліктологія: проблемні питання. URL: http://goal-int.org/informacijna-deliktologiya-problemni-pitannya/

specific branch institute, namely, the science of information violations and its methodology[2].

Generalization of the given views on the essence of information delictology demonstrates, that despite the lack of a single academic notion of the concept it primarily covers a complex legal science with information delicts, their peculiarities, elements, causes and conditions facilitating information tortness as a subject of its research.

Based on that, we suggest a specific definition of information delictology as a complex legal science formed out of the knowledge of the system of information delicts as well as their features, peculiarities of elements, causes and conditions conductive to their commitment along with the preventive actions regarding to information statutory violations, legal and social values protection aimed at the academic formulation of techniques and programs of information tortness reduction and the provision of information legal order within the society and the state[3].

2. The Subject Matter and the Object of Study of Information Delictology as its Constructive Elements, Their Nature and Definition Problems

It is common knowledge that any science evolves only under the circumstances of its subject of research separation out of the system of objective and subjective connections of the reality phenomena.

Understanding of a particular nature of information delictology lies in comparison between the subject matter of the science and its object of study.

Academic science considers the object of study as something unstudied and requiring scientific research as well as opposing the acquired knowledge of objects and phenomena of the material world[4].

Philosophy defines the object of academic study as "objective features, connections and relationship involved in the cognitive process"[5].

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[2] Цимбалюк В. С. Охорона та захист інформаційних ресурсів на засадах юридичної деліктології. *Правова інформатика*. 2007. № 4 (16). С. 23.

[3] Арістова І. В., Баранов О. А., Дзьобань О. П. та ін. Юридична відповідальність за правопорушення в інформаційній сфері та основи інформаційної деліктології : монографія. Київ: КВІЦ, 2019. С. 144.

[4] Петровская О. В. Магистратура: проблемы методики преподавания юридических дисциплин : монография. М.: Высшее образование, Юрайт-Издат, 2012. URL: http://base.garant.ru/58085321/.

Defining the object of study O. Rudenko makes an important clarification: "What is meant here is not just objective reality or givenness, but the fact that any phenomenon becomes the object of knowledge provided that it is involved in the cognitive process[6]".

Taking into account the above mentioned clarifications, information delictology studies information tortness as the object of scientific cognition.

For the purposes of the given paper, the last concept can be defined as a system-structural socio-public phenomenon stipulated by illegal needs or interests, which is entitative regarding to illegal use of information, communication technologies, information privacy breach, invasion of information infrastructure or information legal order as a whole, manifested at a certain area during a particular period of time and entails the application of organizational and legal measures aimed to prevent information delicts along with the social values security and protection pertaining to information area.

The provided definition demonstrates that information tortness poses not just a body of information delicts, but an integral systematic phenomenon caused by the ongoing social processes and factors stimulating the violation of information and legal provisions.

According to such interpretation tortness represents the form of social behavior for the members of informational society that violates the legally valid functioning of various kinds of social values protected by the state.

On the other hand, the emergence and development of information tortness has been the indicator of a separate group of factors formation (causes and conditions) as well as the regularities encouraging the participants of information relations to illegal conduct that violates information legal order established by the law, information rights of a person or proper functioning of information infrastructure. All the above mentioned demonstrates negative antisocial character of information tortness and its connection with illegal interests and needs of the participants of information relations.

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[5] Руденко О. В. До проблеми співвідношення об'єкта та предмета наукового пізнання. *Міжнародна наукова конференція "Дні науки філософського ф-ту-2005"* : матеріали доповідей та виступів. Частина 2. К.: ВПЦ "Київський університет", 2005. С. 80.

[6] Ibidem.

Hence, information tortness as the object of research combines the following elements:

1) a body of information delicts incorporated with cause-effect complex, the subjects and the field of commitment as well as the preventative measures that create anti-social and system-structural phenomenon, namely, information tortness posing direct threat for national information safety, public information legal order as well as rights and legitimate concerns of the participants of information relations;

2) the properties of information tortness characterizing socio-legal and system-structural features of the given large-scale illegal phenomenon reveal its state, regional, generic or specific peculiarities as the illegal social phenomenon;

3) countermeasures to information tortness, in particular, administrative and criminal remedies, state programs aimed to prevent information delicts, enforcement of information legal order as a whole;

4) information area as objective and territorial space of information tortness emergence and development and regularity of its existence encouraging the participants of information relations to legal prohibitions infringement along with illegal use of information and disobedience of the established order of information activity exercising.

Representing one of the fundamental categories of the science of information delictology "object" is revealed in its particular components, in other words, in the phenomena, factors and processes that were discovered previousely and can cause emergence or developing of information tortness.

According to general scientific meaning "a subject of a science" is a category that means a set of issues studied; any physical objects researched and deliberated[7].

As it was noticed by M. Alekseev, a subject of a science has been the result of reality "processing", its known stylization. Hence, there are as many scientific styles as subjects. The same reality, for example, Beethoven sonata, is the sum of mechanical movements in the opinion of a legal scholar and a piece of music full of content and sense for a

[7] Петровская О. В. Магистратура: проблемы методики преподавания юридических дисциплин : монография. М.: Высшее образование, Юрайт-Издат, 2012. URL: http://base.garant.ru/58085321/.

cultural studies scholar. Correspondingly, the structure of the subject depends on the objectives of reality and our demands regarding to it[8].

There is no integrated view of the subject among the representatives of information delictology. The main cornerstone of scientific disputes on the above mentioned problematics has been the definition of the structural elements of information delictology subject of study.

According to Y. Maksymenko :"The subject matter of information delictology constitutes information violations committed by means of information telecommunication technologies and communication facilities as well as those occurring in connection with infringement of right for creation, gathering, receiving, storing, using, distributing, safety and protection of information"[9].

In his turn, V. Tsymbaliuk considers information infringement to be the subject of information delictology[10].

Taking into account the academic views mentioned above, the subject matter of information delictology can be defined as a body of information delicts, that were committed at a particular territory of the state during a specific period of time, that create information tortness along with their structure, status, growth rates, causes and conditions for their commitment and socio-legal personality characteristic of the information and legal prohibitions offender, state programs of information legal order and national information safety.

Proceeding from the contents of the definition provided, the basis of the subject matter of information delictology is the whole variety of information delicts and related social phenomena as well as processes limited by specific space-time boundaries, field of commitment and the typology of the offender's personality.

It is not just about administrative information, disciplinary information or civil information delicts, their social and legal consequences and the specifics of a person as the offender of information and legal regulations, but also about crimes in the field of information activity, typology of these offenders, their socially dangerous manifestation and so on.

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[8] Алексеев Н. Н. Очерки по общей теории государства. Теория государства и права. Хрестоматия: учебное пособие. М. : «Интерстиль», 1998. С. 5.

[9] Максименко Ю. Є. Інформаційна деліктологія: проблемні питання. URL: http://goal-int.org/informacijna-deliktologiya-problemni-pitannya/

[10] Цимбалюк В. С. Охорона та захист інформаційних ресурсів на засадах юридичної деліктології. *Правова інформатика.* 2007. № 4 (16). С. 23.

Due to the given approach to understanding of the content of the category "subject matter of the science of information delictology," the science acquires a broad meaningfulness providing theoretical and methodological integrity of all information delicts and contributing to the formation of their integral doctrinally reasonable system based on common (generic) properties, as well as a unified set of causes and conditions that contribute to the development of informational tortness in Ukraine.

On the other hand, the coverage of the subject matter content of information delictology of different elements of information delicts facilitates the integral formation of theoretical understanding of the object of the corresponding legal science, provides the development of a unified and doctrinally reasonable mechanism for counteracting the dissemination of information torness, clarification the causes and conditions contributing to transition of some information and legal conflicts into others differed in socio-legal consequences.

As one of the key features of any science, the subject matter of information delictology, along with the performing of its content-forming function directly affects the system of the given science in a way of defining its internal structural components. Such a connection between the categories "subject" and "system" of information delictology also has a reverse manifestation of interaction, when the latter of these categories determines the logical construction of the subject matter of information delictology and the nature of functional-methodological and conceptual connections of its internal elements.

From that perspective the system of information delictology acts as an internal structure of the science isolated by the generic substantive criterion and formed on the basis of the connection between its substantive components: information and delict standards; information tortness; the causes and conditions that contribute to the emergence of that antisocial phenomenon; a person violating legal prohibitions in the information area; preventive measures as well as the state programs for the prevention of information tortness, the body of which forms the subject matter of the science of information delictology.

The definition of the concept of "system" by L. von Bertalanffy: "the complex of interacting components" has been the most common in scientific literarure[11].

[11] Берталанфи Л. Общая теория систем – критический обзор. Исследования по общей теории систем. М: Прогресс, 1969. С. 20.

Such interpretation describes the concept "system" as a multitude of reality objects, endowed with common generic features and capable of ensuring their consistent interaction within an integral coordinated system.

According to the suggested definition of the concept "system" in the dictionary of 1913, it is a collection of objects that are clearly or orderly subordinated, as a rule the order can be logical or academic; a coherent whole of the objects connected by the general law, principle or purpose; the constant unification of principles or elements that form a coherent whole[12].

In the dictionary of D. Ushakov (the first half of the 20th century), the category "system" is defined as "a construction, structure, which forms the unity of naturally located functioning parts[13].

According to the interpretation of the category "system", given by S. Ozhegov and N. Shvedov (the second half of the 20th century), the system is something whole, that represents the integrity of parts which are logically located and stay in mutual communication[14].

The use of the above mentioned definitions in the scientific area means that any science acquires the features of a separate system, provided that there are components selected in a separate group with target and substantive properties interconnected with logical principles, meaningfulness, theoretical and applied purposes within a single formation.

The first attempts to bring scientific knowledge of facts and phenomena characterized by delictology properties into an integrated, unified and logically connected system were made by Professor Ye. Dodinin within the science of administrative delictology. He proposed to define general and specific sections of the science of administrative delictology, each of them integrating particular elements that perform different methodological purposes[15].

Wider views on the content of the analyzed concept were also suggested in terms of the science of administrative delictology.

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[12] Webster's Revised Unabridged Dictionary. Chicago: The University of Chicago, 1913. P. 1465. URL: http://machaut.uchicago.edu/?resource=Webster%27s&word=system&use1913=on

[13] Толковый словарь Ушакова URL: http://www.onlinedics.ru/slovar/ushakov/s/sistema.html

[14] Толковый словарь Ожегова URL: http://www.ozhegov-shvedova.ru/19-741515/СИСТЕМА

[15] Додин Е. В. Административно-правовая наука и административная деликтология. *Актуальные проблемы административной деликтологии : сборник научных трудов.* Киев, 1984. С. 17.

Hence, A. Deriuha suggests separation of general and specific parts within the system of administrative delictology, as well as administrative tortness prevention. In the opinion of the researcher, the general part covers the science-forming categories that include the subject matter and the object of study of delictology research, their balance, methods, the system and the principles of administrative delictology, balance between administrative delictology and other academic sciences. According to A. Deriuha, the functional approach in conducting administrative and delictology research is realized in its full manner.

The specific part covers the theory of administrative offenses prevention, knowledge about the peculiarities of certain types of administrative delicts commitment and the characteristics of persons committing them. Accordingly, the field approach to the study of administrative tortness is realized in terms of the special part that provides the development of private administrative delictology theories[16].

The given views of scholars-administrativists are important for the formation of the concept of the science of information delictology taking into account the general nature of the methodological influence of administrative delictology on the formation of theoretical background of that particular legal science.

At the same time, the subject, methods, sources, principles of the science of informational delictology as well as the existence of special laws for the development of the information area stipulate the impossibility of a complete identification of the general and specific parts of the corresponding legal sciences.

First of all, this is due to the inclusion in the subject of information delictology information delicts with differing degrees of public danger. For that reason, the system of the given legal science should cover the measures of criminal-legal, administrative-legal, disciplinary-legal and civil-legal coercion including legal responsibility applicable for the violation of information statutory provisions, procedures for their implementation, as well as the mechanism for legal protection of the rights and interests of information relations participants.

[16] Дерюга А. М. Концептуально-прекладные основы развития административной деликтологии : автореф. дис. … докт. юрид. наук: спец. 12.00.14. М., 2012. С. 18.

Among the factors that directly affect the formation of the science of information delictology, the following must be emphasized:

1) The subject content of the given legal science research covering information delicts that differ in their specific features, preventive measures and legal consequences;

2) Methodological links of information delictology with other legal sciences that analize the unlawful conduct of individuals and legal entities: administrative delictology, criminology, legal conflictology, legal psychology, information, administrative and criminal law, etc.;

3) a wide range of general and special causes and conditions that facilitate the commitment of information delicts, which do not always arise in the exercising of information activity;

4) the use of the formulated conceptual apparatus as well as the conceptual apparatus borrowed from other legal sciences;

5) inter-area nature of legal measures of the commitment of information delicts prevention as well as the forms and the types of liability for information area violations, with their research as an integral part of the science of information delictology.

In our opinion, taking into account the direct influence of the group of the given factors on the formation of the system of the science of informational delictology, its internal structure can be determined through a broad interpretation of the subject of delictology research.

In our view, the concept, subject matter, object of study, principles, tasks, functions, sources, and methods of information delictology should be included in the components covered by the general part of the science of information delictology; the characteristic of the offender of information and legal restrictions and prohibitions, information-delict relations, their types and structure, the system for preventing the commitment of information delicts, providing information, legal protection and social values protection in the information area, general procedures for applying the appropriate category of legal remedies, the main principles of the formation and implementation of state information policy in the areas of information tortness prevention, legal protection and protection of social values of information area.

Thus, the specific part of the science of information delictology covers certain types of information delicts, special causes and conditions that facilitate their commitment, application of measures of legal coercion including measures of liability regarding to violators of

information statutory provisions, means for the protection of certain categories of individual information rights and freedoms, peculiarities of legal investigation and judgment of certain categories of information disputes, etc.

Under current conditions of the information society evolution, the emergence of new types of information activity, the improvement of world models of e-government, the system of the science of information delictology cannot be regarded to as the constant and completely formed concept.

Under the influence of various delictology factors associated with the evolution of the information society, elements of the content of the science of information delictology have received a new interpretation, new functional and methodological connections have been formed among them that causes the formation of new sub-areas, institutes, sub-institutes and legal regulations which are covered by the content of the science of information delictology.

Hence, the obvious dialectic connection between the formation of the system of the science of information delictology and the existing conditions of the evolution of the information society can be traced based on specific theoretical problems that can be solved through realization of corresponding legal science issues.

3. Methodology of Information Delictology

The necessary attribute of any legal science that characterizes its integrity and the objective design of the system of knowledge about the subject of specific legal regulation has been its method.

The complex nature of the science of informational delictology, along with the lack of a unanimous scientific stance regarding to its place among other legal sciences in legal literature have led to the development of various doctrine views on the methods of information delictology.

According to O. Polushkin, information offenses have structurally complex nature due to the integrity of social-conflict, information and legal elements, which necessitates the use of the integrated, cross-area approach in the research of a specific category of delicts. The complexity of the nature of information violations stipilates the number of scientific research methods, the measures of the state legal policy implementation to prevent the abuse of information rights and freedoms,

as well as the choice of methods for the prevention of information delicts and crimes related to the information area[17].

The development of the view provided by O. Polushkin gives grounds to make an important conclusion for the formation of the methodology of the science of information delictology. Its essence is demonstrated by the fact that the complexity of information and delictology research and, as a consequence, the formation of a broad methodological apparatus of the science of information delictology is caused by the complex and structural nature of the information delicts.

Accordingly, the choice of the methods and measues of delictology research in the information area is determined by the content of the subject matter of the science of information delictology, as well as its tasks and objectives realized in the system of legal sciences.

According to another structural and functional approach, information delictology is considered as one of the sub-areas of information law, which determines the choice of delictology research methods of the first of the named legal sciences[18].

At the same time, without going into disputes on the form of the correspondence of the science of informational delictology with the science of information law, it is necessary to emphasize the important clarification made by Yu. Maksymenko. Its essence is revealed in the existence of the most conceptual, functional and methodological connections between those legal sciences, therefore, elements of the science of information law penetrate into the content of information delictology.

Thus, for the formation of the science of information delictology methods, the content of its subject matter and object of research, the depth of its conceptual and functional-methodological connections with other legal sciences is crucial, as well as the purpose of this legal science in the mechanism of information law enforcement.

Close connection of information delictology with other legal sciences of delictology group has reflected in the structure of methodology apparatus of information delictology.

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[17] Полушкин А. В. Информационное правонарушение: понятие и виды: дис. ... канд. юрид. наук : спец. 12.00.14. Урал. гос. юрид. акад., каф. информ. права и естественнонауч. дисциплин. Екатеринбург, 2009. С. 8.

[18] Максименко Ю. Є. Засади розвитку інформаційної деліктології. Глобальна організація союзницького лідерства URL: http://goal-int.org/zasadi-rozvitku-informacijnoi-deliktologii/

First of all the great influence on the formation of methodology apparatus of the science of information delictology is manifsted from the point of view of administrative delictology with the application of a great number of concepts, methods and theories in the conducting of information delictology research.

As with other legal sciences, the structure of the methodology of administrative delictology in literature is determined through the set of general scientific and specific scientific methods of cognition[19,20].

According to legal scholars, the first group of the defined research methods is formed of dialectical, historical, formal-logical, sociological, statistical methods, the method of transition from abstract to specific, induction and deduction, and others. Specific scientific methods of administrative delictology traditionally include comparative-legal, specifically sociological, statistical, etc.[21,22].

In our opinion, taking into account the identity of the common features of the content elements of all legal sciences of the delictology frame, such a classification of delictology research methods can be applied for the purposes of methodological apparatus construction of the science of information delictology with certain clarifications stipulated by the specifics of its subject matter and the object of study.

Dialectic method forms the basis for general scientific cognitive methods of socio-legal phenomena and processes that are covered by the content of the subject matter and the object of study of information delictology, Its application makes it possible to identify logical connections and contradictions between such philosophical categories as freedom, being, interests, needs, expressions of will and restrictions with the revealing of their content through the basic laws of dialectics.

The law of unity and struggle of opposites serves as a methodological basis for the study of the causes and conditions that facilitate the commitment of information delicts and the identification of

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[19] Дерюга А. М. Концептуально-прекладные основы развития административной деликтологии : автореф. дис. … докт. юрид. наук: спец. 12.00.14. М., 2012. С. 7.

[20] Абдрахманов Б. Е. Административная деликтология в республике Казахстан (концептуальные теоретические и методологические проблемы) : дис. … докт. юрид. наук: спец. 12.00.02. Алмааты, 2010. С. 76.

[21] Никулин М. И. Проблемы науки административной деликтологии : дис. ... д-ра юрид. наук: спец. 12.00.14. Моск. Ун-т МВД России. М.: РГБ, 2006. С. 9.

[22] Гензюк Э. Е. Административная деликтология : дис. ... д-ра юрид. наук. М., 2002. С. 5.

individual features of the offender explaining predisposition to unlawful conduct with the reflection of special features inherent to the specific structure of information delicts. The application of this dialectic law also helps to determine the specific properties of information and communication technologies that induce a person to act in an unlawful manner, allow defining the factors encouraging the emergence of harmful properties of the components of the information area as well as situations where such factors become impossible or minimized.

The law of the transition of quantitative changes to qualitative ones explains the changes in the state and dynamics of information tortness, the tendency to qualitative changes in its types. The application of this dialectic law allows us to figure out the trends in the transition of administrative tortness into criminality within the information area as well as identify the factors that contribute to reducing the number of information delicts occurring on a particular territory over a specific period of time and reveal the socially harmful consequences of that category of unlawful acts[23].

In conducting the research of complex information and legal concepts, processes and phenomena, information delictology is widely used as a method of transition from the abstract to the specific, which traditionally belongs to general scientific methods of cognition in gnoseology[24].

The construction of information and delictology research on the principle of transition from abstract to specific contributes to the formation of generic concepts and categories used by information delictology through the involving of more specific elements of individual characteristics of information delicts to the system.

Such methodological approach in the process of scientific research regarding to the problems of information delicts prevention provides the opportunity of the solution of a complex problem involving theoretical and applied aspect. The problem includes the use of general-delictological, criminological, sociological and other concepts and categories for the formation of a special conceptual apparatus of

[23]Заярний О. А. Правове забезпечення розвитку інформаційної сфери України: адміністративно-деліктний аспект : монографія. Херсон: Видавничий дім «Гельветика», 2017. С. 115, 116.

[24] Губерський Л. В., Надольний І. Ф., Андрущенко В. П. та ін. Філософія : навч. посіб.. 3-тє вид., стер. К.: Вікар, 2003. С. 162.

information delictology as well as setting the limits of such borrowing. The purpose of the method of transition from abstract to specific in the structure of the methodological apparatus of information delictology is stipulated by the existence of deep, multilevel connections between scientific concepts, categories and laws within both the limits of any specific science and on the interdisciplinary level.

In the process of scientific cognition of socio-legal phenomena and processes that are covered by the subject of information delictology research, the method of transition from abstract to specific reveals the full potential of methods and measures in close connection with the method of analysis and synthesis.

Philosophy considers the latter of these methods as a comprehensive method of research, a set of techniques, operations and actions of the mental detachment of objects into constructive elements, properties (analysis) and their integration into a coherent whole (synthesis) when solving the cognitive task[25].

The use of logical methods of analysis and synthesis in information delictology allows to distinguish those content-forming aspects and properties, on the basis of which it becomes possible to formulate new special concepts, in particular: "information delict", "information tortness", "information legal order", etc. . Due to synthetically formed concepts and categories, special features, properties and patterns of development obtain their logical implementation in appropriate structures, suitable for scientific application.

Their analysis allows identifying the common features of specific concepts developed by the information delictology aimed to provide the opportunity to combine them into wider generic structures. Based on that, legal scholars have a real opportunity to separate essential features that form the basis of both generic and specific concepts of the science of information delictology.

Another aspect of the method of analysis and synthesis application has been the ability to split information and delict concepts into individual types, that is, conduct their scientific classification according to different criteria. Attribution of classification method to the structure of the method of analysis and synthesis allows the use of the given method of cognition for structuring the system of scientific concepts of

[25] Сидоренко О. П. Філософія : підручник. К.: Знання, 2009. С. 146.

information delictology in vertical and horizontal directions. In addition to that, the division of the whole into its constituent parts allows revealing the structure of the subject researched along with its the relationships between individual elements while separating the essential things from the non-essential ones and dividing complex things into simple ones[26].

Due to such logical operations, the categories and concepts used by information delictology for characterizing of unlawful phenomena, objects and the processes in the information area acquire the features of scientific certainty.

Hence, the use of the complex of methods and measures pertaining to the method of analysis and synthesis in the issues of information delicts research contributes to the formation of the conceptual apparatus of information delictology, the increase of logical connections between its general and specific parts as well as the definition of the place of this science among other sciences of information area.

One of the general scientific methods widely used for scientific research in information delictology is the historical method. The use of that method makes it possible to analyze information tortness in its historical perspective, determine the main stages and conditions of its emergence and define the historical connections of this socio-legal phenomenon with criminality in the information area.

The research of the historical aspects of information tortness facilitates clarification of the legal nature of information delicts, the causes and conditions that contribute to their commitment.

On the basis of the historical method legal scholars make the selection of unlawful acts recognized as information delicts by the law for a long period of time; separation of information and legal conflicts acquiring the features of socially-harmful acts is made, or recommendations are drafted regarding to the necessity of certain components of such delicts criminality.

By revealing the primary roots of the phenomena and processes that make up the subject of the science of information delictology, the historical method makes it possible to determine the dynamic properties of the measures of information delicts prevention, construct their system

[26] Губерський Л. В., Надольний І. Ф., Андрущенко В. П. та ін. Філософія : навч. посіб.. 3-тє вид., стер. К.: Вікар, 2003. С. 204.

in accordance with periodization of the information society formation established by historical science and state the most effective measures of legal influence on the violators of information and legal prohibitions.

Incorporating of the historical method in the general scientific methodology of information delictology is also due to the variability of the state of information tortness as a social and legal phenomenon, the existence of which is associated with the historical development of the information society and the emergence of new interests and needs among its members that do not always correspond to the general principles of information legal order formation.

Application of the historical method in the given context allows analyzing of the causes and conditions that contribute to the development of information tortness in their dynamics, specifying the legal, economic, socio-psychological preconditions for the emergence of this phenomenon, separating the periods of historical development of the information society, which trace the tendency to the increase or decrease of the number of information delicts committed.

The system of specific scientific methods is widely used alongside with the general scientific methods of information delictology cognition.

Statistical method is of great importance among the above mentioned group of scientific methods[27,28].

It helps to research quantitative and qualitative indicators of the development of information tortness and the personality of the violator of legal restrictions and proscriptions within the national information space. The application of that method in the study of various components of the subject of information delictology allows:

1) providing a comprehensive digital description of the development of information tortness at the state level, regional level or a separate branch of information activity for a specific period of time;

2) specifying the regularities of the development of information delicts on the territory of the state, a separate region, the condition of such tortness as well as its dynamics and structure;

3) characterizing the violators of information and legal prohibitions under socio-demographic, professional, economic and other criteria

[27] Дерюга А. М. Концептуально-прекладные основы развития административной деликтологии : автореф. дис. … докт. юрид. наук: спец. 12.00.14. М., 2012. С. 5.

[28] Никулин М. И. Проблемы науки административной деликтологии : дис. ... д-ра юрид. наук: спец. 12.00.14. Моск. Ун-т МВД России. М. : РГБ, 2006. С. 7.

having information and delict significance (sex, age, level of professional training, form and type of information activity, number of completed information delicts);

4) determining in the digital dimension the distinctive, permanent and appropriate connections of information tortness with other types of illegal behavior taking place in the information area;

5) collecting and organizing the necessary digital materials, which can serve as the basis for identifying the causes and conditions that contribute to the development of information tortness, as well as its forecasting and the development of preventive measures for information delicts counteracting;

6) obtaining the necessary information that demonstrates the effectiveness of the application of measures of legal coercion to persons committed information delicts.

Such a multi-faceted application of the statistical method in the conduct of information and delict research leads to the possibility of its use not only in the process of general concepts and categories of information delictology study, but also for the study of certain types of information delicts, causes and conditions that contribute to their commitment, preventive measures, etc.

The analysis of the nature and purpose of the statistical method shows that the information obtained as a result of its application is widely used in the application of other general and scientific methods of the science of information delictology and serves as a key factor in determining the objectives and tasks of delictology research.

Based on that, the structure of the methodological apparatus of information delictology demonstrates close relationship of statistical method with comparative-legal method.

Special scientific nature of the latter of these methods of cognition[29;30] provides for the comparison of various components of the subject matter of information delictology. In particular, the following components of information delicts are compared: causes and conditions for their commitment and the characteristics of the violator of

[29] Манжул І. В. Визначення методів пізнання в науковій літературі. *Бюлетень Міністерства юстиції України.* 2012. № 11. С. 12.

[30] Гаращук І. В., Петришин О. В. Порівняльно-правовий метод у дослідженні місцевого самоврядування. *Державне будівництво та місцеве самоврядування.* 2015. № 29. С. 56.

information and legal prohibitions with similar notions, phenomena and categories stipulated by the existence of other types of unlawful conduct, namely, crime, economic tortness, etc.

According to the philosophers, "the effectiveness of the method is determined by the rules of application: to compare only homogeneous and interrelated objects, not to be limited in comparison with the establishment of only the similarity of objects, but necessarily identify the differences between them; compare objects by essential features". At the same time, "comparison is not the goal of cognition. According to the results of comparison the question inevitably arises of the problematic nature of new knowledge, the validity of the similarity of objects or the differences between them, the theoretical and practical possibilities of acquired knowledge implementation ".

Based on the given philosophical regularities and principles, information delictology reveals common and distinctive features of information tortness and criminality in the information area and causes and conditions common for both types of illegal conduct facilitating the violation of information statutory provisions, and establishes the regularities of the transition of administrative-information violation to information crimes, and vice versa.

Taking into account such designation of a comparative legal method in the information delictology, it is possible to distinguish several aspects of its emergence regarding to the investigation of information tortness:

1) the analysis of information delicts and information crimes for the purpose of identifying their common and distinctive features, and the research of adjacent components of such delicts on this basis;

2) the research of the content and structure of administrative-delict, criminal and other legal regulations imposing liability for information delicts in order to identify general and specific regularities of the formation of unlawful actions components in the information area, imposition of punishment for their commitment;

3) dynamics analysis of information tortness and other forms of illegal conduct in the information area, definition of common and diverse tendencies of increase or decrease of that social and legal phenomena manifestation;

4) study of state programs for preventing the commitment of information delicts concerning their effectiveness, content, compliance

with the tasks of ensuring the security and protection of information rights, freedoms of the individual, information legal order in general, establishing of correlation changes in the field of information tortness;

5) identification of general and specific drawbacks in the organization of law enforcement activity in the field of prevention of information delicts commitment, determining the nature of their impact on information law enforcement.

Combining these aspects of the implementation of the comparative legal method within the science of information delictology indicates that the application of the given method allows lawyers to determine the place of the science among other legal sciences researching information area. The use of the comparative legal method also allows analyzing the system of the science of information delictology from the perspective of the improvement of its conceptual apparatus and internal structure based on the achievements of other legal sciences, namely, criminology, administrative delictology and legal conflictology.

Such a multilateral application of the comparative legal method indicates its omnitude for delictology research aimed to prevent information delicts, the ability to identify the concepts, patterns, trends and problems necessary for information delictology improvement. On the other hand, the scientific material accumulated as a result of the comparative legal method use can serve as the basis for the application of other specific scientific methods of cognition, focused on the tasks different from those solved by the comparative legal method[31].

Explicitly sociological method is one of the specific scientific methods widely used in information delictology for the research of different aspects of its subject matter.

As far as the given method of cognition is specifically-scientific, it combines such means of information tortness cognition as observation, questioning, document analysis and experiment.

Administrative delictology and criminology provide the extended interpretation of the content of the specified instruments of the explicitly sociological method, in this connection they recognize the importance of independent methods of sociological research[32;33].

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[31]Комзюк А. Т. Адміністративний примус в правоохоронній діяльності міліції в Україні : дис. докт. юрид. наук: спец. 12.00.07. Нац. Унт. Внутр. справ. Х., 2002. С. 24.

[32] Долгова А. И. Криминология : учебник. М., 2002. С. 49.

However, despite the existence of scientific disputes on the internal structure of the explicitly sociological method of cognition, its structural elements are combined according to their purpose, that is, the study of social nature of information delicts and information tortness stipulated by their commitment, the nature of public assessment of these unlawful phenomena and socially harmful consequences caused by them. Taking into account such methodological views, the opinion of those scholars who consider observation, questioning, document analysis and experiment as techniques and means of explicitly sociological method within the limits of the science of administrative delictology is viewed more reasonable.

In general, application of the explicitly sociological method of research in information delictology allows identifying the social properties of the illegal conduct of the participants of information relations, expressed in the form of information delicts, defining the social causes and conditions that contribute to anti-social manifestations of information activity, revealing public assessment of information tortness.

In spite of some disputes and difficulties with the formation of the conceptual apparatus and the system, we can state the conceptual formation of the methodology of research in the science of information delictology, the integration of general scientific and specific methods in the process of various aspects of information tortness cognition.

At the same time, the conceptual formation of the methodological apparatus of the science of information delictology presupposes the existence of various theoretical and applied processes directly aimed at the improvement of certain methods of delictology research in the information area along with specialization and integration of the objects of cognition.

CONCLUSIONS

In general, the research of the scientific works devoted to various aspects of the science of information delictology in national and foreign legal doctrine points to theoretical separation and institutional composition of the system of knowledge of information delicts as well as causes and conditions that contribute to their commitment and the measures of

[33] Шиханцов Г. Г. Криминология : учебник. М.: Прогресс, 2001. С. 54.

information tortness prevention along with the mechanism of legal responsibility for relevant delicts into a separate comlex legal science.

Recognition of the corresponding theoretical and methodological value of the information delictology, along with the doctrinal justification of its explicit substantive ties with other legal sciences examining the regularities of the development of the information area, provides a systematic study of information delicts, as well as the integration of the results into holistic theoretical and methodological basis of information delictology.

In the context of delictology research of the issues of the information area development and the commitment of the new types of unlawful acts within the national information space the content of the science of information delictology cannot be called completely formulated.

The following directions in the development of the science of informational delictology remain relevant for today, namely, the development of the theory of *information delict*; scientific provision of *codification* of the norms of legislation on *information delicts* and the responsibility for their commitment; scientific substantiation of the system of special penalties for information delicts commitment; research of the peculiarities of certain types of *information delicts*; scientific development of delictology aspects of the mechanism of legal provision for the development of the *information area* of Ukraine; scientific substantiation of the rules of delictolization or criminalization of unlawful acts committed in the information area; research of the peculiarities of legal procedures regarding to certain categories of information disputes arising from conflict proceedings, the formation of scientific recommendations for improving the practice of their investigation and resolution; the formation of methodological foundations and methodological recommendations for preventing information and legal conflicts emergence in the process of certain types of information activity exercising.

Thus, the national legal doctrine has necessary prerequisites for institutionalization of the system of knowledge on information delicts, measures for their prevention within the science of information delictology, creating theoretical foundations of the mechanism of legal responsibility for information statutory provisions violation on their basis, safety and protection of social values of information area.

SUMMARY

In the conditions of negative dynamics in the commitment of information offences legal science faced the problem of the system of scientific knowledge formation about the specific category of delicts as well as causes and conditions for their commitment, peculiarities of preventive measures regarding to them and so on.

Information delictology has become the legal science that assumed the fulfillment of the respective tasks. The lack of a single view of the essence and the main components of information delictology (subject, object, methods, systems) in legal literature has led to the emergence of many controversial issues requiring their doctrinal solution.

The given paper makes an attempt of substantiation of the essence of scientific information delictology from doctrinal and law enforcement points of view, defining its subject, object and system as well as specifying the peculiarities of the methods of information violations delictology research.

The paper states that despite the lack of unified scientific understanding of the content of the concept, it covers the complex legal science, with the subject of study represented by information delicts, their features, components, the causes and conditions that contribute to the development of information tortness.

The conducted research demonstrated that the content of the constructive elements of the science of information delictology, namely, its subject, object and methods of research are mainly determined by the specifics of information violations, the legal content of measures for their prevention as well as the objectives of information security providing.

The result of the research has become the formulation of the main directions for further development of the science of information delictology in the conclusion of the paper, identification of the main doctrinal problems that require solution in the process of the subject, object and methods of legal science research improvement.

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USE OF SYSTEM ANALYSIS IN LAW, AS THE CORE OF THE ANALYTICAL PROCESS OF INFORMATION PROCESSING

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INTRODUCTION

The result of the political and socio-economic transformations that are taking place in the world today are the dynamic changes in the functioning of states and existing and emerging international unions. The current situation creates the circumstances for the emergence and development of new forms of crime and criminal phenomena. Organized crime has gained unknown to this time, and the most dangerous and complex forms, has become one of the main causes of the global decline in the sense of security. The conditions that have emerged have identified new requirements in the application of modern technologies for detecting offenses and making decisions in the course of law enforcement activities.

To overcome regional and transnational crime, law enforcement agencies from developed countries (France, USA, UK, Romania, Poland) criminal intelligence and risk management are used as key instruments for national security.

Based on the assessments of institutions that criminal analysis is used in their daily activities, it can undeniably be asserted that it is an effective tool for combating crime.

Given that the criminal analysis system is characterized by identical analytical procedures and principles and symbols of visual representation, it is a kind of international interpretation of criminal events by criminal analysts around the world. This indisputable argument also creates new opportunities for the development of effective cooperation and cooperation between national and international law enforcement agencies.

The essence of each analysis lies in the process of methodological identification of the links between any information, which leads to the formulation of the answer to the question: what, why? and what for? When it comes to criminal analysis, its essence is a clear statement of

reasoning and proposals for further action aimed at apprehending offenders and detecting evidence of a crime.

The system for analyzing information in the activities of law enforcement bodies is to establish and search for links between data on criminal activity and other data potentially associated with them for the purpose of their use in the development of tactical and strategic principles, including in the area of integrated border management, which is based on the analysis of information and aimed at cooperation, as well as finding solutions to the fight against organized crime, nationally and internationally.

Established in the law enforcement agencies of the information analysis system, they have become adequate mechanisms for combating crime, an instrument for creating an integrated risk management system, providing information and analytical support, preparing management decisions and a means of preventing the response to existing threats in the area of national security.

1. General directions of analytical activity of law enforcement bodies for protection of economic rights, freedoms and interests of persons during investigation of criminal offenses

Analysis (from the Greek ἀναλυτικά – "the art of analysis" decomposed) are those parts of the philosophical systems in which the objects of philosophy are decomposed into constituent elements so that then it is possible, on the basis of them, to make unmistakable conclusions and applications.

The process of cognition is a complex whole, from which no element can be removed, so that the whole process does not come into disarray. We get knowledge from different sources: art, religion, and philosophy can be alongside with science. Undoubtedly, the character of thinking analyst and analyst as a system of knowledge should be dialectical. Naturally, the perception of reality by any person is carried out subjectively. However, the main thing is that a reasonable person should maximally strive for the objectivity and adequacy of reflection of reality, to develop their mental faculties, using for this all the richness of dialectical methodology.

The role of intelligence at all times and in all countries was extremely high. Intellect is the most valuable resource and product owned by a society that seeks to develop.

It is well-known that in modern conditions, the intellectual resource of the population as well as the demographic, territorial, raw material, technological parameters of a society is the most important condition for progressive development. Moreover, it can be affirmed that without the active involvement of this resource, other resources work only partially. The intellect has one unique property – self-reproduction. The more it is used, the more it becomes. And another unique property of intelligence – it multiplies the available material resources.

The philosophical category "system" is extremely important for analytics. Like motion, space, time, the reflection of systemicity is a concept that reflects the general, inalienable properties of matter. The system captures the predominance of organization in the world over chaotic changes. The unauthorized change in one in any respect turns out to be orderly in another. Organisativity is inherent in matter in any of its spatio-temporal scales and finds its theoretical explanation and reflection in the category "system".

From the point of view of philosophy, the content of system analysis as the nucleus of analysts gives practitioners the opportunity to increase the efficiency of their work, the main idea of system analysis is the combination of formal and informal representations in models and methods that help gradually to formalize the ways of objective reflection and analysis of the problem situation, to reveal its essence.

The place of system analysis in the structure of analytics and related branches of knowledge is presented in Figure 1.

While conducting a system analysis, it is necessary, first of all, to reflect the situation with the help of the fullest possible definition of the system, and then, highlighting the most significant components that influence the decision-making, to formulate a working definition of the system, which can be specified, expand or narrowing, depending on the analysis process .

Owning a method of system analysis largely determines the level of professionalism of the analyst.

The concept of system analysis is by no means a concept associated exclusively with military systems or security systems. It is a means of finding solutions to resolve contradictions in any problem area. The objective characteristic, the identification and formulation of the problem involves its solution, which uses the entire analytical arsenal of information processing techniques. Accordingly, the necessary

approaches to choosing a strategy that gives the best ratio of risk, efficiency and cost.

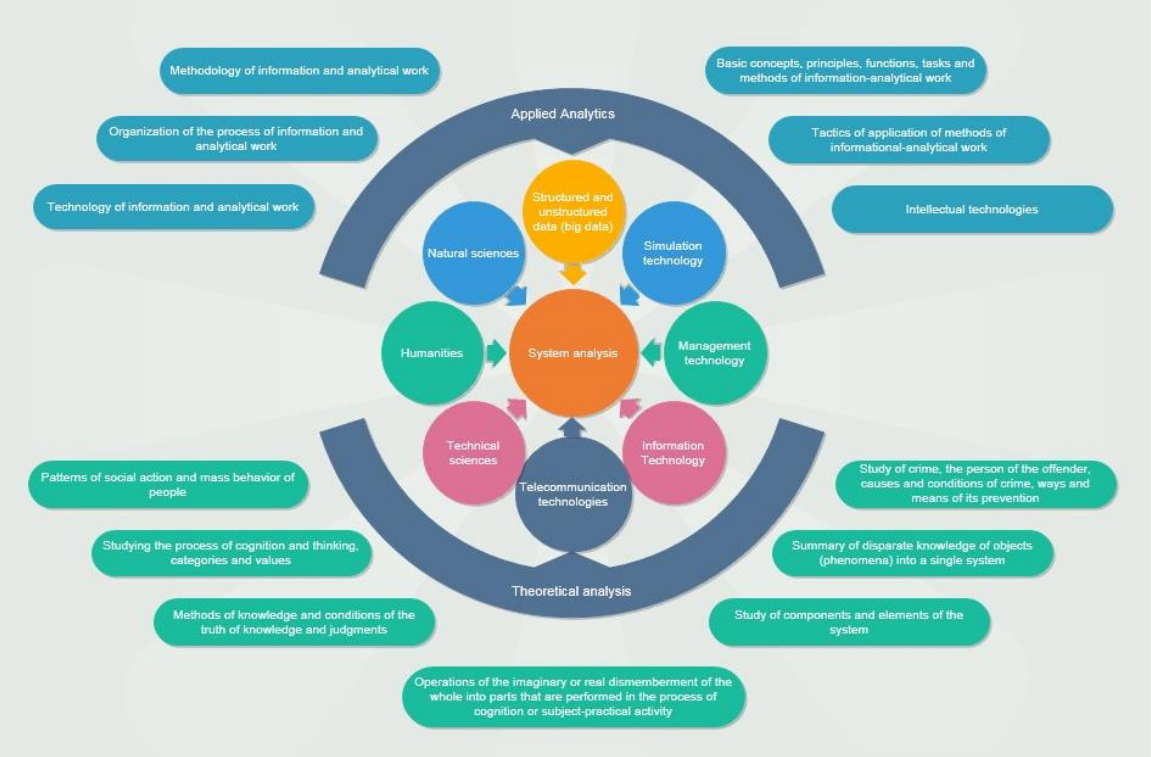

Fig. 1

The purpose of the system analysis by examining each element of the system in its own environment is to ensure that the system as a whole can fulfill its task at a minimal cost of resources.

The main thing in the system analysis is how difficult it is to turn into a simple; in search of effective means of managing complex objects; as difficult-to-understand problem to optimize in a series of tasks, in principle have a solution, to show their structure and hierarchy, the sequence of actions.

Thus, system analysis is a complex, multifactor approach to the consideration of objects of analysis, their representation as a system that has its elements, relationships, structure, functions. It is very important to understand that system analysis is not a formal method of analysis based on frozen dogma, but rather a conceptual approach that requires the creative use of the maximum range of disciplines and research methods for systematic consideration of any one problem.

Within the framework of the given powers, law enforcement agencies obtain a sufficient array of information on criminal activity, including organized crime. In connection with the above, the overriding task is the use of tools that would enable the processing of a large amount of available data. One such instrument is a criminal analysis[1].

In the countries of the European Union, the USA and other developed countries, the use of criminal analysis capabilities is mandatory for all law enforcement agencies. Its content, rules and procedures are clearly defined and regulated in a legal sense. This, in particular, concerns the conduct of operational search activities, pre-trial investigations and criminal proceedings in court[2].

Criminal analysis is a specific type of information-analytical activity that is to identify and, as accurately as possible, determine the internal relationships between information (information, data) relating to a crime and any other data obtained from different sources, their use in the interests of conducting investigative and investigative activities, their analytical support[3].

In the course of criminal analysis, targeted search, detection, fixation, deletion, organizing, analysis and evaluation of criminal information, its representation (visualization), transmission and realization are provided.

In the process of criminal analysis the following main types – operational (operational), tactical and strategic are distinguished[4].

Operational (analytical) analytics is aimed at a short-term law enforcement action or an active case that serves to achieve within a short time the intended purpose in the form of, for example, arresting and arresting a suspect, imposing an arrest on a crime instrument or extracting it.

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[1] Користін О.Є., Албул С.В. та ін. Основи кримінального аналізу : посібник з елементами тренінгу. Одеса : ОДУВС, 2016 С. 9.

[2] Албул С.В. Кримінальна розвідка як функція оперативно-розшукової діяльності: Європейський досвід та Українські перспективи. *European Reforms Bulletin: international scientific peer-reviewed journal: Grand Duchy of Luxembourg*. 2015. № 2. С. 2.

[3] Власюк О.В. Роль і місце кримінального аналізу у розкритті та розслідуванні злочинів на державному кордоні України. *Матеріали постійно діючого науково-практичного семінару*. Х. : *Інститут підготовки юрид. кадрів для СБУ Нац. юрид. акад. України ім. Я. Мудрого*, 2011. Випуск № 3. Частина № 1. С. 82.

[4] Користін О.Є., Албул С.В. та ін. Основи кримінального аналізу : посібник з елементами тренінгу. Одеса : ОДУВС, 2016 С.9.

The operational (operational) analysis is directed directly at the analytical support of operative and investigative activities, in particular as part of the work on operational searches, as well as analytical support for pre-trial investigation of criminal offenses, the conduct of which falls within the competence of the bodies of the National Police of Ukraine. In addition, the results of operational criminal analysis are passed on to other law enforcement authorities, along with the data (information) of the detected offenses.

Operational (criminal) analysis consists of planning, collecting, collecting, comparing and evaluating information for its analysis and reporting as well as further setting of tasks.

The purpose of collecting and analyzing information is to create and test hypotheses and conclusions about past, present and future wrongful acts, including the description of the structure and scope of criminal groups and the transfer of the leading components of clear information concerning operational searches and investigative search actions.

Operational (criminal) analysis is carried out in three forms:

1. The analysis accompanying the operational search and investigative activities (the available information related to the proceedings is streamlined, the new information is correlated and evaluated accordingly, hypotheses that are supported by evidence or conclusions are refuted in the current order).

2. Analysis that is conducted to support investigative and investigative activities (the analyst takes on analytical tasks, presents the results of the analysis, searches for information from his own databases).

3. Analysis that initiates operational search and investigative activities.

All forms of analysis are interlinked, if the analysis is accompanied by operational search and investigative activities, at the same time it supports it and gives grounds for conducting investigative (search) actions and operational-search activities. In the course of the analytical process, information about the offender, the course of the event, the means of committing a crime, the time and place of his commission, etc. are evaluated. The circulation of this information occurs between operational staff and investigators, which consists not only in the provision or receipt of information, but also in the active acquisition of information.

The source of information may be the database, materials of pre-trial investigations, including protocols for interrogations of witnesses and suspects, materials of operative and prosecution cases, reports of other bodies, media reports, etc.

The practical use of criminal analysis by the operative-search units of the National Police of Ukraine confirmed its high efficiency in multi-episode proceedings covering a large area, including a significant number of events and subjects of a criminal group with a complex structural structure. In these cases, traditional methods of tracking and asserting facts were not effective enough.

Operational criminal analysis can cover the following areas: crime, criminals and methods of doing business.

Crime analysis is to reconstruct its course by establishing a sequence of individual events; presence of signs of repetition of events; the mutual disconnection of information originating from various sources. The analysis of the crime is carried out with the purpose of determining recommendations for further direction of conducting operational-search activities and investigative (search) actions.

In the process of crime analysis, various analytical technologies are used, including action schemes, event schemes or activity schemes.

In addition to analyzing a crime, a comparative analysis of crimes can be performed, which is to compare information on criminal proceedings against similar crimes, in order to determine whether some of them could be committed or organized by the same suspect. In conducting comparative analysis of crimes, analytical technologies such as systematic search in databases, review of reports and reports, comparison of similarity of the obtained data and determination of the likelihood of this similarity are used.

An analysis whose subject matter is a criminal may relate to a criminal group or a specific offender's profile. Analysis of the criminal group consists in organizing information on the members of the criminal group in order to get acquainted with the structure of the group and the establishment of the roles of its individual members. In conducting criminal group analysis, analytical technologies such as interconnection schemes, action plans, event schemes, activity diagrams, telephone call analysis, financial transaction analysis and financial profiling of individuals involved in criminal proceedings are used. The analysis of the psychological profile of the typical perpetrator makes it possible to

determine on the basis of the description of the crime, the character of the person who committed it, the type of person-perpetrator, the possible area of his residence, the work performed.

Strategic analytics deals with longer-term problems and challenges such as identifying key criminal individuals or criminal syndicates; forecasts of the growth of criminal activity and the establishment of priorities in law enforcement activities.

Strategic Criminal Analysis focuses on data processing for management processes and decision making. Information, depending on the recipient, has a planning, evaluation, guidance or controlling character. Its subject is the long-term goals, definition of priorities and strategies for combating crime on the basis of in-depth research and forecasting its development.

The products of strategic analysis, as a rule, are: reports on the situation; analyzes of phenomena; thematic analyzes; criminological regional analyzes; structural analysis of threats; Concepts / proposals for improving the fight against crime.

During the analysis of crime an analysis of its essence, volume, dynamics and development of crime or its various types (categories of crimes) in separate territories and for a certain period of time is carried out. The results of this analysis can be presented in the following analytical forms: charts, graphs, tables, diagrams, maps, photos, geolocation, statistical information, written reports, etc.

The aggregate of the evidence collected as a result of these acts creates, at the initial stage of the pre-trial investigation of criminal proceedings, sufficient prerequisites for the information provision of the further course of the investigation. However, this becomes possible only when these actions are carried out taking into account all the peculiarities of the search-and-cognitive activity of the investigator and the peculiarity of the information display of the crime event.

Consequently, the main objective of criminal analysis is to strengthen mechanisms for the prevention, detection, documentation and investigation of criminal offenses, as well as the establishment of mechanisms for monitoring the crime situation, the exchange of information at the state, regional and international levels regarding trends and risks in this area.

2. Use of elements of criminal analysis during the investigation of economic criminal offenses

Currently, in most countries of the world, elements of criminal analysis are used to process large-scale information arrays, as well as visualize the circumstances of events, connections between individuals, events and individuals during the investigation of economic criminal offenses, which are often latent, well-organized and subject to actors management of a large amount of damage. In addition, elements of criminal analysis help to make the right procedural and organizational decisions, and prevent a number of possible negative consequences during the investigation of economic criminal offenses. Thus, criminal analysis data that is timely (that is, the information is provided on time) provide grounds for taking measures (this definition implies that the information is sufficiently detailed and reliable for carrying out the appropriate measures) necessary for the effective conduct of investigators (investigators) and other procedural actions in the investigation of serious and especially grave economic crimes and other illegal activities of organized crime, especially if it has a transnational character.

A characteristic feature of modern economic crimes is the availability of a large amount of information that was obtained by operational or investigative means, which should be generalized, processed, analyzed, and assessed and further used effectively in investigations of the specified crime category. For this purpose, it is necessary to actively use analytical methods recognized in many developed countries of the world.

The analysis is a methodology that seeks to establish the presence of a link or link between two or more elements of forensically meaningful information. The analysis allows you to remove relevant information and use it to reduce the degree of uncertainty and predict what can happen with a certain probability, to make logical, rational and substantiated conclusions in criminal proceedings.

Significant role in the implementation of criminal analysis of the leading countries of the world is its information support. At present, powerful information arrays are created and integrated in different areas of activity, which allows for effective investigation of criminal offenses. One of the leaders in the software for criminal analysis is IBM. Thus, the use of the IBM I2 Analyst's Notebook software facilitates the accumulation, processing, research and use of available data on a criminal offense committed, and thus positively affects the effectiveness

of the investigation of criminal proceedings. The IBM I2 Analyst's Notebook is a visual analytical environment that maximizes the use of enormous amounts of information accumulated by public services and enterprises. With an intuitive context-based interface, analysts (operational staff, investigators and other law enforcement officers) can quickly collate, analyze, and visualize data from different sources, reducing the time to find important information in complex data.

The IBM I2 software is a direct-purpose computer software designed to summarize, analyze, proxy, and visualize real-time information exchange. This software is a set of interoperable programs that perform the relevant specific functions at all stages of the crime investigation. The specified software product is an advanced method of investigation of crimes and analysis of operational information.

The IBM I2 Analyst's Notebook helps law enforcement agencies to solve the following tasks:

– to systematize structured and unstructured data from many sources into a single coherent presentation;

– to identify key persons (persons involved in criminal proceedings), events, relationships and regularities between them, which can not always be detected by other means;

– to improve understanding of the structure, hierarchy and methods of action of criminal groups specializing in committing economic crimes;

– to facilitate the exchange of complex data, which allows to receive timely and effective operational and tactical decisions in the course of criminal proceedings;

– the ability to benefit from rapid implementation, which ensures rapid growth of productivity, thanks to reliable solutions for visual analytics;

– import various types of data, including phone call records, financial transactions, IP address logs and forensic research on mobile phones;

– Convert data in a clear and understandable way, which helps to analyze complex scenarios;

– effectively analyze a wide range of data types using a flexible data modeling and visualization environment;

– Detailed analysis and deep understanding of the data through various analytical representations, including associative, spatial, temporal and statistical representations;

– operative definition of key persons, relationships between them and their connection with key events using the functions of analysis of the main connections;

– understanding of the main stages of the development of events or regularities in criminal activity at the expense of powerful tools for conducting time analysis;

– to identify possible mediators between, at first sight, unrelated entities in the network;

– the possibility to study data in detail in order to identify unobvious connections, patterns and trends in complex data;

– geospatial analytics capabilities;

– use integrated analysis of social networks to identify key individuals and relationships within criminal organizations;

– to assist in the decision making process and optimize the use of resources for rapid response to network penetration, surveillance or violation of their work;

– creation of intuitive diagrams, in which the supporting data for briefings and presentations are fixed and systematized;

– integration of information and visual representation of data into analytical reports;

– the ability to share charts with people who do not use I2 Analyst's Notebook[5].

These features are inherent in many similar software products. Therefore, their use will only positively affect the completeness and speed of the investigation of economic crime.

The use of analytical programs in data analysis provides a number of positive factors that help to increase the efficiency and effectiveness of the actors of evidence.

Therefore, the use of the above-mentioned methods and software products in the investigation of crimes related to unlawful benefits,

[5] Beebe, Sarah Miller; Pherson, Randolph H. (2014). Cases in Intelligence Analysis: Structured Analytic Techniques in Action. SAGE Publications; Heuer, Richards J. Jr. (2007). Psychology Intelligence Analysis, Pherson Associates, LLC: Reston, VA. URL: https://www.cia.gov/csi/books/19104/ index.html; Pherson Katherine and Pherson Randolph. (2013) Critical Thinking for Strategic Intelligence. SAGE Publications. Central Intelligence Agency (CIA); Khalsa, S. (2009). Intelligence Community Debate over Intuition versus Structured Technique: Implications for Improving Intelligence Warning. Journal Confli. Studies. Retrieved from http://journals.hil.unb.ca/index.php/JCS/article/ view/15234/20838; A Tradecraft Primer: Structured Analytic Techniques for Improving Intelligence Analysis, 2012 - Cognitive and Perceptual Biases, Reasoning Processes.

which will provide the relevant investigators and operational units with a number of significant advantages, seems to be justified: 1) the construction of informative schemes of criminal and family ties of individuals and suspects; 2) construction of schemes of criminal ties in the scale of the rayon, city, region and the whole state; 3) reliable identification of new entrants subject to operational development; 4) determining the distribution of roles among members of criminal groups; 5) the establishment of new members of criminal groups; 6) effective documentation and investigation of multi-episode crimes; 7) reflection of the directions of traffic flows of money caught in a criminal way, and their further legalization; 8) forecasting of possible conflicts of interest among civil servants; 9) coherence of actions of participants of the investigation and operational group; 10) presentation of the results of law enforcement activities[6].

For example, a solution to the problem of determining the distribution of roles among members of criminal groups that commit economic crimes can be considered through phone analysis and computer analysis. With the help of this analysis, evidence can be obtained, which is concealed by criminals, is carefully guarded against leakage and distribution.

This information can be used to successfully plan further conduct of investigative (investigative) actions, as well as to effectively organize the investigation of criminal proceedings in general.

Criminal analysis of telephones consists of a vowel and anonymous conduction with the use of appropriate technical means for observing, selecting and fixing the content of information transmitted by a person, as well as receiving, converting and fixing various types of signals transmitted by communication channels (signs, signals, written text , images, sounds, messages of any kind)[7]. By analyzing a person's telephone, which is of interest to law enforcement agencies, it is possible

[6] Сайтбеков А.М., Кондратьев И.В. Возможности использования аналитических программ в борьбе с организованной преступностью. *Вестник КарГу.* 2015. URL: http://articlekz.com/article/11838. Холостенко А.В. Можливості використання аналітичних методик при розслідуванні злочинів, повьязаних із неправомірною вигодою. *Кримінальна розвідка: методологія, законодавство, зарубіжний досвід: матеріали Міжнародної науково-практичної конференції (м. Одеса, 29 квітня 2016 р.)*. Одеса: ОДУВС, 2016. С. 175.

[7] *Інструкція про організацію проведення негласних слідчо-розшукових дій. URL: http://zakon3.rada.gov.ua/laws/show/v0114900-12.*

to monitor its telephone conversations and other signals such as: SMS, MMS, fax, modem communications, which are transmitted through the telephone communication channel being controlled[8].

In the future, information from phones and computers is analyzed, and the findings of criminal analysts about determining the distribution of roles between members of criminal groups are visualized to facilitate perception.

Visualization of the circumstances of events, connections between individuals, events and individuals is an important part of the use of elements of criminal analysis during the investigation of economic criminal offenses. This is confirmed by the fact that law enforcement agencies in the United States and a number of European countries place considerable emphasis on such visualization, in particular when developing relationships between persons who are of operational interest or are involved in criminal proceedings. As practice shows, during the conduct of criminal intelligence, visualized information is much better perceived by law enforcement officers, which in turn increases the effectiveness of their activities[9].

Processing large amounts of information is possible only with the use of intelligent technologies, such as IBM I2, which reduce the brain load of the investigator and help him when making a decision in the investigation of complex ephemeral economic crimes.

The analysis of democratic socio-political, economic, legal and organizational measures for the restructuring of society in Ukraine suggests that the state authorities seek to counteract the negative trends of social development, their intellectual and organizational potential, and change the situation for the better. First of all, it concerns the fight against economic crime. Determinants of the growth of crime and the criminalization of social relations are not only in themselves negative socio-economic factors of social development, but also the inability to counteract these factors of a balanced state economic, social and legal policy and to ensure the proper legal order of regulation of social

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[8] Албул С.В. Злочинне середовище та його інфраструктура як об'єкти реалізації розвідувальної функції оперативно-розшукової діяльності органів внутрішніх справ. *Процесуальні, криміналістичні та психологічні аспекти досудового розслідування: Матеріали Всеукраїнської науково-практичної конференції (Одеса, 07 листопада 2014)*. Одеса: ОДУВС, 2014. С. 29-30.

[9] Бандурка О. М., Перепелиця М.М., Манжай О. В. Оперативно-розшукова компаративістика: [монографія]. Харків: ХНУВС, 2013. С. 83.

relations. Therefore, for Ukraine, it is important to involve foreign experience in combating economic crime.

Economic crime is becoming an increasingly problematic, threatening phenomenon for Ukraine as an independent, independent and young sovereign state. Existing for a long time, imperfect economic relations are used by criminals to parasitize the body of a society, to provide significant material revenues at the expense of non-payment of taxes, corruption, fraud with financial resources, legalization by means of "money laundering" of money laundered, occupation of prohibited types of economic activity, direct encroachment on all forms of property and committing other crimes of economic orientation. Obviously, such acts should not be left without proper response from the state; they oblige their law enforcement agencies to fight uncompromisingly with them. The current state of state-building in Ukraine is closely linked with the development of foreign experience in public administration in the organization of law enforcement activities, including the fight against crime in the field of economic relations, because economic crime has grave consequences for any society. By choosing the path to improving and developing the system of law enforcement, it is always useful to really evaluate your own experience and, at the same time, turn to the developments in this field of scientists from other countries. A scientific study shows that foreign states are different socio-political entities with their own history, peculiarities of the state system, political system, culture and traditions. Therefore, consideration of foreign experience needs to be generalized, choosing from this experience the most significant elements, characteristics, trends that make up scientific and practical interest for Ukraine.

The US experience in combating legalization (laundering) of criminal profits proves the following. In the United States, the legal definition of the legalization of criminal proceeds was expanded, and now the crime is recognized by the conduct of the operation itself with funds of doubtful origin, regardless of the fact of proving a predicate crime. Criminal liability for the legalization of criminal proceeds in the United States is established both at the federal level and in each individual state. A separate responsibility for the establishment and for the so-called "structuring" – the distribution of a large amount of money for small amounts in order to avoid checks by the government. Such activity is regarded as misleading in order to conceal suspicious

transactions[10]. Since the legalization of criminal proceeds consists in the implementation of any cash operations, countering the legalization is, first of all, in tracking cash flows and cashless funds. One of the most effective ways of tracking cash flow is monitoring payments.

Today, in the United States, the two most common forms of settlement work are using checks and credit cards. Both forms of settlements are through the system of the federal reserve and the central bank, which monitor the payments using checks and credit cards. The American strategy to combat money laundering can not be called a decent and rational. Despite legislative innovations, we can not say that the federal government has managed to prosecute all illegal transactions with money of dubious origin. In addition, the issue of interaction between law enforcement and controlling bodies is not resolved. So, in the American government's strategy to combat the legalization of criminal proceeds, 10-12 different federal agencies are responsible for different directions of its implementation, and the mechanism of their cooperation is not developed[11].

Law enforcement officers increasingly have to not only perform functions to combat economic crime and stop the illegal activities, but also to eliminate the consequences of such offenses, to return funds, property and valuables from foreign countries, which is one of the most difficult tasks. The problem is compounded by the weakness of the financial control system in Ukraine and the CIS countries, in which it is virtually impossible to establish the origin of cash, large amounts are in circulation in cash.

Currently, cooperation between law enforcement agencies of Ukraine is in the process of becoming. Few contacts have been maintained with the United Nations, the Organization for Security and Co-operation in Europe, the International Financial Action Task Force on Money Laundering, , The Council of Europe (mainly this is a participation in projects on financing and organizational support of the activities of Ukrainian law-enforcement bodies, which is carried out in the form of conferences, seminars, trainings).

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[10] Половинський Л.В. Протидія легалізації (відмиванню) доходів, одержаних злочинним шляхом: міжнародний та вітчизняний досвід. *Економіка. Фінанси. Право*. 2008. № 5. С. 33.

[11] Журавель М.І. Міжнародні правові аспекти боротьби з легалізацією доходів здобутих злочинним шляхом. *Часопис Київського університету права*. 2010. № 1. С. 283.

The most effective practical interaction is established with Interpol. Recognizing the high degree of harm caused by economic crimes to society and the world financial system, the Police Directorate of the General Secretariat of Interpol formed a Department for Combating Financial and Economic Crimes, which also includes the ROAS Working Group, which specializes in controlling income received as a result of criminal activity. The research of Flatwash Group is aimed at detecting suspicious financial transactions and money, property and property acquired in a criminal way, as well as in CIS countries[12]. In some states, financial intelligence units have been established that are integrated into the single Egmond network, which aims to intensify the exchange of information on economic crimes, and the creation of a unified international database of such crimes. The main focus is on crimes of money laundering. The modern system of combating economic crime as a result of its development has consolidated the basic rules and principles of interaction between the competent authorities of the world, has developed a unified methodology for requesting information, as well as the amount of information that can be provided. Thus, during operational and investigative measures and investigative actions related to the disclosure of crimes in the field of economy, the channels of Interpol, you can receive the following information: official names of commercial structures (firms, organizations); the date of registration of legal entities and business entities in state bodies; legal address, telephones and other telecommunication facilities; surnames and names of heads of such structures; main directions of activity of the enterprise; the size of the authorized capital; information about termination of activity; criminal records concerning the heads of enterprises. Along with the achievements of law enforcement agencies in combating crime, many problems remain, in particular, with regard to extradition (extradition) of persons who committed economic crimes, from one state to another. For example, almost all agreements concluded by Ukraine exclude crimes in the field of economic activity or financial violations. First of all, this is done to prevent abuse by governments of individual countries, who, in the guise of pursuit of economic crimes,

[12] Мартинов М.Д. Сучасні проблеми організації діяльності органів внутрішніх справ України та шляхи їх вирішення. *Форум права*. 2010. № 3. С. 290-296. URL: http://www. nbuv. gov.ua/ejournals/FP/2010-3/10mmdsiv.pdf

pursue a person on a political, religious or military basis. Therefore, persons extracted for committing economic crimes may be counted on their fingers.

One of the methods for collecting operational information is the use of open source intelligence, namely, "OSINT" (open-source intelligence). Today, one can observe an increase in interest in OSINT not only by journalists, analysts of private companies and ordinary citizens, but also by intelligence analysts of special services, because OSINT has certain advantages over the collection, processing and analysis of restricted information, on the very fact that does not require special access to information, which means it saves the time of the user, does not require special skills, the cost of significant funds. Using "OSINT" in some cases prevents the commission of a criminal offense, since the expression "It is better to prevent crime than to punish" becomes more and more important.

The United States uses OSINT information to a greater extent for planning combat operations, organizing and conducting military operations, and preventing terrorist acts[13]. According to US intelligence analysts, the biggest problem with OSINT is currently unverified sources of information, provocative resources, insecure information. In order to obtain the most relevant and qualitative information, the user must process a lot of information from different sources and summarize it as required by the purpose and objectives of the study. In the United States, an extensive network of centers and points conducting OSINT intelligence has been formed and provides information to more than 7,000 intelligence data consumers. And this is nothing more than a result of coordinated actions of the legislative and executive authorities aimed at pursuing a focused policy in the field of ensuring national security. Similar structures exist at all levels[14]. Israel also uses "OSINT" primarily to analyze the military capabilities of the enemy. In the military intelligence structure there is a separate special unit for the analysis of

[13] Додонов А.Г., Ландэ Д.В., Цыганок В.В. и др. Распознавание информационных операций. К. : ООО «Инжиниринг», 2017. 282 с.; Разведка с использованием открытых источников информации в США. URL: http://pentagonus.ru/publ/razvedka_s_ispolzovaniem_otkrytykh_istochnikov_informacii_v_ssha/80-1-0-1614.

[14] *Разведка с использованием открытых источников информации в США. URL: http://pentagonus.ru/publ/razvedka_s_ispolzovaniem_otkrytykh_istochnikov_informacii_v_ssha/80-1-0-1614.*

open sources of information "Hatsaf", which collects information only for military purposes. In the UK, with the help of "OSINT," civilian journalists from the BBC Monitoring Service are collecting primary information, which goes into the secret services for further use in specific research areas. Considering the international experience of using OSINT, it may be noted that a large number of information sources are needed to obtain high-quality and up-to-date information. For correct and productive work of this method it is not enough to find information, it must be processed, analyzed, found confirmation of the investigated facts, events and phenomena, because much information is created just for misinformation. For today in the leading countries of the world "OSINT" is actively and successfully used by information and analytical units; data on the percentage of productivity of open source information confirm the need and relevance of US and European experience in solving operational, tactical and strategic tasks of law enforcement agencies. Since the difference between a newcomer looking for information on the Internet and a OSINT professional who is familiar with the search and analysis technique has some skills in this area, it is enormous: where the novice will see the photo, the number of reposts, groups and pages that the person signed , profile of a person in social networks – the professional will see the activity, the dates of publications, the background in the photographs, the possible reasons for subscribing to certain groups, highlight the circles of communication (build a scheme of connections of the person / persons), etc.

CONCLUSIONS

Therefore, one can confidently assert that in order to increase the effectiveness of protecting the economic rights, freedoms and interests of individuals during the investigation of criminal offenses, it is considered necessary and expedient to use the whole arsenal of analytical methods. In order to achieve the maximum level of automation of work, qualitative processing and visualization (visibility) of relationships between individuals, events and individuals in the existing large masses of information in the investigation of multi-episode, complex, latent economic crimes committed by organized criminal groups (groups), it is recommended to use standard software criminal analysis, for example, such software systems as IBM I2 Analyst's Notebook, IBM I2 iBase8, and others. The indicated analytical

tools considerably increase the efficiency of investigating the investigated crimes, due to the possibility of drawing up charts (diagrams) of criminal ties (including telephone communication schemes with unlimited number of mobile phones and numbers), event matrices, financial flow diagrams, frequency charts of contacts.

Today, all law enforcement agencies in developed countries have powerful automated tools for configuring, collecting, controlling, analyzing and displaying complex information and communications, as well as the nature of data. This approach is a requirement of the present for a complete counteraction to organized crime, which makes it possible to simplify the task of criminal proceedings for the protection of economic rights, freedoms and interests of a person, society, the state from criminal offenses, as well as to ensure a prompt, full and impartial investigation so that everyone, Whoever committed a criminal offense has been prosecuted as guilty.

SUMMARY

This section covers the use of analytical methods to protect economic rights, freedoms and interests of individuals in the investigation of criminal offenses. The position on the place of information analysis in counteracting crime is substantiated. The general directions of analytical activity of law enforcement bodies are indicated. Graphically, the place of system analysis in the structure of analytics and related branches of knowledge is depicted. The experience of the European Union and the United States regarding the use of criminal analysis capabilities in combating economic crime is presented. The directions of use of elements of criminal analysis (specialized software) during investigation of economic criminal offenses are indicated. The indicated analytical tools considerably increase the efficiency of investigating the investigated crimes, due to the possibility of drawing up charts (diagrams) of criminal ties (including telephone communication schemes with unlimited number of mobile phones and numbers), event matrices, financial flow diagrams, frequency charts of contacts.

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